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THESIS

**THE DILEMMA OF COMBATING TERRORISM IN
DEMOCRATIZING STATES: A CASE STUDY OF THE
REPUBLIC OF UGANDA**

by

Alex Bwoma Tumushabe

March 2015

Thesis Advisor:
Co-Advisor:

Carolyn Halladay
Florina Cristiana Matei

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STATES: A CASE STUDY OF THE REPUBLIC OF UGANDA**

Alex Bwoma Tumushabe
Major, Ugandan Army
B.BA, Makerere University Business School, 2003

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**NAVAL POSTGRADUATE SCHOOL
March 2015**

Author: Alex Bwoma Tumushabe

Approved by: Carolyn Halladay
Thesis Advisor

Florina Cristiana Matei
Co-Advisor

Mohammed Hafez
Chair, Department of National Security Affairs

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ABSTRACT

This thesis analyzes the dilemmas that both democratic and democratizing states face while dealing with terrorism-related problems. This problem has been equally pressing to a country like Uganda because it has been experiencing the problem of terrorism while undergoing the process of democratization. Much of the discussion boils down to whether and at what point forceful measures against terrorism protect or imperil the democracy. The challenge is how to balance counterterrorism measures and uphold democratic principles.

The thesis discusses various approaches and experiences used by democratic states, using the United States and the United Kingdom as examples in tackling the problem of terrorism. From a policy perspective, immediately after 9/11, leaders from the United States and the United Kingdom introduced broad new authorities and legal measures in such laws as the U.S. Patriot Act and The Anti-Terrorism Crime and Security Act of 2001 of the UK. Using the experiences of these countries, Uganda adopted similar approaches by introducing the Anti-Terrorism Act of 2002, through which counterterrorism efforts have been handled.

This study concludes by identifying some of the contradictions brought about by the new policies and examining their impact on both developed democracies and democratizing states like Uganda.

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LIST OF ACRONYMS AND ABBREVIATIONS

ACLU	American Civil Liberties Union
ADF	Allied Democratic Front
AMISOM	African Union Mission in Somalia
ATCSA	Anti-Terrorism Crime and Security Act
AQAP	Al-Qaeda in Arabian Peninsula
AQIM	Al-Qaeda in the Islamic Maghreb
AU	African Union
AUMF	Authorization for the Use of Military Force
CAR	Central Africa Republic
CT	Counter Terrorism
CTC	Counter Terrorism Committee
DRC	Democratic Republic of Congo
ECHR	European Convention on Human Rights
ESDP	European Security and Defence Policy
ESO	External Security Organization
EU	European Union
FBI	Federal Bureau of Investigation
FISA	Foreign Intelligence Surveillance Act
FISC	Foreign Intelligence Surveillance Court
GLR	Great Lakes Region
IRA	Irish Republican Army
ISO	Internal Security Organization
JATT	Joint Anti-Terrorism Task Force
JHA	Justice and Home Affairs Policies
LRA	Lord Resistance Army
OAU	Organization of African Unity
NATO	North Atlantic Treaty Organization
NRM	National Resistance Movement
NSA	National Security Agency
PISCE	Personal Identification Secure Comparison and Evaluation System

SNA	Somalia National Army
TFT	Transitional Forces
UAV	Unmanned Aerial Vehicle
UN	United Nations
UPDF	Uganda Peoples' Defence Forces

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I. INTRODUCTION

Democratic governments face a dilemma of protecting civil liberties and protecting the nation, especially in times of crisis. Immediately after 9/11, for example, U.S. leaders introduced broad new authorities and legal measures in such laws as the USA Patriot Act.¹ In the same vein, the government of Uganda enacted the Anti-Terrorism Act of 2002, responding to its own internal and regional threats of terrorism. Ugandans met the Anti-Terrorism Act with mixed feelings, much the same way that American citizens are skeptical about the Patriot Act in regard to their civil liberties, and ultimately to the security of the nation. Much of the discourse boils down to whether and at what point forceful measures to protect or imperil the democracy. The challenge is deciding how to balance counterterrorism measures while upholding democratic principles.

The question is, if anything, more pressing in a democratizing state like Uganda.² Uganda, as a political entity, has been engaged in democratization since 1986, when the National Resistance Movement (NRM) assumed the leadership of the country. Thus, Uganda's democratic institutions are relatively new, and in some cases still taking form. On the other hand, Uganda finds itself in a tough neighborhood, which includes the Democratic Republic of Congo (DRC), South Sudan, and Kenya, with many direct and regional neighbors that struggle with post-colonial development and internal conflicts amid their own first steps towards democracy. And while neighboring Kenya presents a more stable polity, it shares with Uganda at least one major regional/transnational terrorist threat in the form of Al-Shabaab. In other words the sense of danger to the

¹ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001, Pub L. No. 107–56, 115 Stat. 272 (2001), <http://www.gpo.gov/fdsys/pkg/PLAW-107publ56/html/PLAW-107publ56.html>

² Freedom House 2014 rates Uganda as partly free in terms of democracy based on three factors: freedom ratings, civil liberties, and political rights. The rating is on a scale of one to seven, where one is the best and seven the worst. Freedom House gives Uganda a 5.0 freedom rating overall, with a 4.0 in civil liberties, and a 6.0 in political rights. This ranking reflects well on Uganda's democratic progress since 1986. Notably, Uganda scores 4 out of 7 on issues of civil liberties, meaning that even when it is dealing with the problems of terrorism, it still observes and protects civil liberties.

Ugandan state and the government is as real and pressing as the country's democratic progress.

A. MAJOR RESEARCH QUESTIONS

How does the experience and example of the United States and Great Britain affect Uganda's approach and its outcomes? What reforms and new policies could help resolve the tension within the current legal framework for counterterrorism and, ultimately, advance Uganda's democratic progress?

B. SIGNIFICANCE OF THE RESEARCH QUESTION

Over the last few decades, terrorism has taken center stage in world politics, presenting one of the biggest security challenges in many countries, particularly in the democratic and democratizing world. Examples of such countries include the United States (2001), the United Kingdom (2005), Spain (2004), India (2008), Turkey (2003), Indonesia (2002), and Bulgaria (2013). During this period, many countries adopted various counterterrorism measures. The United States and the United Kingdom have been at the forefront in the fight against terrorism, using such legal instruments as the USA Patriot Act and the Anti-Terrorism Crime and Security Act,³ respectively. These laws both formed and reflected the prevailing view of the prominent democracies on how to respond to the terrorist threat at home and abroad since September 11, 2001. Much of the rest of the world followed suit, including Uganda, which introduced the Anti-Terrorism Act of 2002.⁴ That is to say that in its effort to combat terrorism, the government of Uganda has adopted counterterrorism policy based on the U.S. and UK models.

Policy makers in countries like the United States and the United Kingdom, including Uganda, insist that even a democratic state—perhaps especially a democratic state—must provide security to its citizens as well as guarantee their civil liberties. The matter becomes more complicated when terrorist or even criminal elements seek to

³ *United Kingdom: Anti-Terrorism, Crime and Security Act of 2001* [United Kingdom of Great Britain and Northern Ireland] (2001) c. 24, 14 December 2001, <http://www.refworld.org/docid/3de73e8e4.html>.

⁴ Malinda S. Smith, *Securing Africa: Post-9/11 Discourses on Terrorism* (England: Ashgate, 2010), 107.

exploit these civil liberties against the state and polity that holds them so dear. By some reckoning, civil liberties may seem to represent weaknesses built into a democratic state, hamstringing the government in its response while cloaking the planning and communications of terrorists and criminals.⁵

This viewpoint—and the laws that it informs—forms a serious challenge to democratized states because some of these government actions seem to contradict national laws that are already in existence. For example, in Uganda, under the Anti-Terrorism Act, the security agencies carry out arrests of alleged terror suspects. The citizens allege that the arrests are carried out arbitrarily, without any justification, and use disproportional force. Worse, they do not lead to a free and fair trial, as Ugandan law today requires.

Domestically, Uganda has been facing two ongoing insurgencies for more than two-and-a-half decades: the Lord's Resistance Army (LRA) in the northern parts of the country, and the Allied Democratic Front (ADF) in the west.⁶ In addition, the country has also been challenged by transnational terrorist threats and actions mainly from Al-Shabaab, an Al-Qaeda offshoot operating from the neighboring countries of Kenya and Somalia. For instance, on July 11, 2010, Al-Shabaab carried out twin suicide attacks in Kampala, Uganda, leading to the deaths of 74 innocent civilians; an additional 89 people were injured.⁷ These attacks qualified Al-Shabaab as a transnational terror group posing a major threat to Uganda.⁸

⁵ John Ashcroft, *Never Again: Securing America and Restoring Justice* (New York, Center Street, 2006), 134.

⁶ Wafula Okumu, *Domestic Terrorism in Africa: Defining, Addressing and Understanding Its Impact on Human Security* (Pretoria, South Africa: Institute for Security Studies, 2009), 77, <http://dspace.africaportal.org/jspui/bitstream/123456789/31087/1/TERRORISMREPORT.pdf?1>.

⁷ Max Delany and Jason Straziuso. "Uganda Bomb Attack Kills World Cup Fans: Al-Shabaab Suspected in Kampala explosions," Huffington Post, July 11, 2010, http://www.huffingtonpost.com/2010/07/11/uganda-bomb-world-cup_n_642336.html.

⁸ BBC News, "Al-Qaeda around the World," August 5, 2013, <http://www.bbc.com/news/world-13296443>.

C. LITERATURE REVIEW

The main purpose of this study is to explore the particular challenges that democratizing states face in combating terrorism while maintaining the civil liberties of their citizens. The existing literature on the subject offers a wide range of divergent explanations relating to democratizing states that were hitherto undemocratic. With the collapse of communism in the 20th century, many countries—especially from Eastern Europe, the former Soviet Union, and Africa—witnessed the regime changes from authoritarian governments to democratic regimes. These regime changes have advanced the movement toward democratization in many countries that were under the authoritarian rule. However, Gene Sharp notes that problems of poverty, crime, and bureaucratic inefficiency are still prevalent in most societies despite the downfall of such regimes.⁹ To alleviate such problems, and to achieve societies that are free and secure, states must consolidate democracy.

1. Consolidation of Democracy

Philippe C. Schmitter and Terry Lynn Karl's writings on democracy give a crystal clear analysis of those factors that are most relevant to a successful transition from authoritarianism to democracy.¹⁰ They acknowledge that, for the transition to materialize there should emerge among the people a sense of national unity as a mutual understanding after experiencing a serious conflict. This development must also be accompanied by the existence of conscious democratic rulers who understand and can advance the noble cause for democracy.

Their work is supplemented by Juan J. Linz and Alfred Stepan, who offer a detailed definition of a consolidated democracy in the following terms:

Behaviorally, a democratic regime in a territory is consolidated when no significant national, social, economic, political, or institutional actors spend significant resources attempting to achieve their objectives by

⁹ Gene Sharp, *From Dictatorship to Democracy: A Conceptual Framework for Liberation* (Boston: The Albert Einstein Institution, 2010), 2.

¹⁰ Philippe C. Schmitter and Terry Lynn Karl, "What Democracy Is . . . and Is Not," in *Transitions to Democracy*, ed. David Arter (Brookfield, Vermont: Dartmouth Publishing Company, 1995), 76.

creating a nondemocratic regime or turning to violence or foreign intervention to secede from the state.

Attitudinally, a democratic regime is consolidated when a strong majority of public opinion holds the belief that democratic procedures and institutions are the most appropriate way to govern collective life in a society such as theirs and when the support for antisystem alternative is quite small or more or less isolated from the pro-democratic forces.

Constitutionally, a democratic regime is consolidated when the governmental and nongovernmental forces alike, throughout the territory of the state, become subjected to, and habituated to, the resolution of a conflict within the specific laws, procedures, and institutions sanctioned by the new democratic process.¹¹

These definitions suggest that there is more than one type of consolidated democracy. The authors also point out that it is unwise to assume that all the given conditions guarantee everlasting democracy. Democracy wants careful and constant tending. Nevertheless, they further argue that a democracy is consolidated when five arenas are developed and function as follows: a free and lively civil society, a relatively autonomous and valued political society, a rule of law to ensure legal guarantees for citizens' freedoms and independent associational life, a state bureaucracy that is usable by the new democratic government, and an institutionalized economic society.¹²

A discussion of the conditions and values that favor democracy is of crucial relevance in this study because the absence of such conditions hampers the progress of a consolidated democracy. For democracy to thrive, Schmitter and Karl contend that "specific procedural norms must be followed and civic rights must be respected."¹³ From this standpoint, one can ably argue that democracy offers conditions that protect civil liberties, which, according to Seung-Whan Choi, offer favorable conditions that

¹¹ Juan J. Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation, Southern Europe, South America, and Post-Communist Europe* (Baltimore: John Hopkins University Press, 1996), 6.

¹² Linz and Stepan, *Problems of Democratic Transition and Consolidation*, 7.

¹³ Schmitter and Karl, "What Democracy Is . . . and Is Not," 80.

encourage the citizens to gain confidence in their government and discourage them from engaging in violence.¹⁴

This point, however, does not mean that such conditions work on their own to promote democracy and eventually lead to the consolidation of democracy. On the contrary, other conditions are necessary to enable the consolidation of democracy. Dankwart A. Rustow points out that those civil liberties cannot guarantee consolidation of democracy when the citizens do not have a sense of national unity.¹⁵ National unity is one thing that determines the success of consolidation of democracy because citizens put aside issues of ethnicity, religion, and culture with aim of building their nation. As Linz and Stepan have indicated, the promising democracies try to avoid some of the issues pertaining to politics that led to stateless problems or put a mechanism in place of resolving such problems.

For example, Spain, according to Florina Cristiana Matei and Jose A. Olmeda, has successfully consolidated after transitioning from the longest dictatorship in the world. Spain's success is attributed to the willingness of the military to hand over power to civilian control, which is a sign of national unity.¹⁶ On the other hand, Larry Diamond, Juan J. Linz, and Seymour Martin Lipset indicate that most African countries have failed to unite because of lack of national unity. They argue that most African countries are divided along the lines of ethnicity and lack political culture, forming the main sources of conflicts in many African countries that hamper the progress of democratization.¹⁷

¹⁴ Seung-Whan Choi, "Fighting Terrorism through the Rule of Law?" *Journal of Conflict Resolution* 54, no. 6 (June 2010), 941, doi: 10. 1177/0022002710716666.

¹⁵ Schmitter and Karl, "What Democracy Is . . . and Is Not," 73.

¹⁶ Florina Cristiana Matei and Jose A. Olmeda, "Executive Civilian Control of the Military (Spain)," in *The Routledge Handbook of Civil-Military Relations* (New York: Publishers Graphics, 2013), 188.

¹⁷ Larry Diamond, Juan J. Linz, and Seymour Martin Lipset, *Democracy in Developing Countries* (London: Adamantine Press, 1988), 10.

2. Terrorism and Democracy

In the literature on terrorism and democracy, two terms appear with frequency: *anti-terrorism* and *counterterrorism*.¹⁸ The difference between these terms is important, especially when dealing with terrorism in democratized states. Daniel Byman notes that anti-terrorism measures are designed as defensive actions to prevent the occurrence of terrorism—as opposed to counterterrorism measures, which are offensive in nature and are designed to respond to terrorism acts.¹⁹ In both instances, governments must design a method by which to combat terrorism without compromising civil liberties, while at the same time upholding the democratic principles of the state.

Similarly, Alex Schmid indicates that when democracies are faced with terrorism, the main dilemma is between “acceptability” and “effectiveness.”²⁰ Counter-terrorism measures, therefore, must be acceptable to a democratizing society in terms of being accountable to the citizens. The measures must be effective against a particular type of attack. This observation implies that in fighting terrorism, there is a need to make a hard preference: either sacrificing some democratic core principles in order to be successful against terrorism, or tolerating some level of terrorism in order to maintain the civil freedom and rights cherished in a democracy.

Richard English, in support of effectiveness rather than muscular counterterrorism measures, argues that strong counter-terrorism measures make terrorist groups overreact in the form of retaliations. He notes that a well-balanced response to terrorist incidents avoids prolonging the threat of terrorism.²¹ His definition of terrorism may help in understanding the relationship between terrorism and democracy:

Terrorism involves heterogeneous violence used or threatened with a political aim; it can involve a variety of acts, of targets and of actors; it

¹⁸ Brigitte L. Nacos, “Terrorism and Counterterrorism,” *Terrorism and Counterterrorism* (Columbia University, 2012), 212.

¹⁹ Daniel Byman, *The Five Front War: The Better Way to Fight Global Jihad* (New Jersey: John Wiley & Sons, 2008), 53.

²⁰ Alex P. Schmid, “Terrorism and Democracy,” *Terrorism and Political Violence* 4, no. 4 (1992): 14, doi: 10.1080/095465592084271773.

²¹ Richard English, *Terrorism: How to Respond* (New York: Oxford University Press, 2009), 55.

possess an important psychological dimension, producing terror or fear among a directly threatened group and also a wider implied audience in the hope of maximizing political communication and achievement; it embodies of power relation; it represents a subspecies of warfare, and as such it can form part of a wider campaign of violence and non-violent attempts at political leverage.²²

His definition of how governments should respond to acts of terrorism is particularly helpful as it appears that some acts may turn out to be political, as was the case of Nelson Mandela during his struggles against apartheid in South Africa.

Conversely, there are some instances where democratizing states endeavor to put in place avenues through which the citizens can resolve their grievances without resorting to violent means. Instead, terrorist groups take advantage of conditions in the democratic systems to engage in terrorism activities. This argument justifies Eubank and Weinberg's analysis indicating that democracy and terrorism go together—meaning that democratic states are more likely to experience terrorism activities than non-democratic states. Their main argument is that democracy provides conditions that help terrorism to thrive.²³ Paul Wilkinson augments the same argument, noting that terrorists take the advantage of the inherent freedom existing in the democratic society, exploiting their freedom of action without any interruption from the state.²⁴ In addition, terrorists also exploit freedom of speech to criticize government and incite violence. For example, Hitler and Mussolini were able to destroy the democracies of Germany and Italy, respectively, by taking advantage of the freedoms their democratic societies offered.²⁵

Eubank and Weinberg further assert that democracies are sometimes a major target to terrorism as a result of the groups and issues external to the conflict.²⁶ For instance, in 1998, the bombing of the U.S. embassies in Kenya and Tanzania killed at 252

²² English, *Terrorism*, 24.

²³ William Lee Eubank and Leonard Weinberg, "Terrorism and Political Violence: Does Democracy Encourage Terrorism?" *Terrorism and Political Violence* 6 no.4 (December 2007), 417, doi: 1080/09546559408427271.

²⁴ Paul Wilkinson, *Terrorism versus Democracy: The Liberal State Response* (London: Frank Cass Publishers, 2002), 23.

²⁵ Ibid.

²⁶ Eubank and Weinberg, "Terrorism and Political Violence," 160.

people, including twelve U.S. citizens, and injured more than five thousand.²⁷ Significantly, these terrorist attacks were basically foreign to the countries in which they were carried out—countries that, it might be added bore the heaviest costs in terms of casualties and property damage. Eubank and Weinberg cite some other instances in which various European, African, and Latin America democracies, including American facilities in other countries, have been major targets of terrorist actions. The argument holds that the attacks are, in the first instance, due to the resentment over the global role of the United States (now seen as a successor to the European colonial powers of the 19th century); they encouraged the possibility of extensive coverage in the America-dominated mass media.²⁸

3. The Democratic Response

Paul Wilkinson asserts that there are decision-making dilemmas in the fight against terrorism that include intelligence work, prevention efforts, offensive actions, legislative efforts, punitive actions, media coverage, and morale and psychological warfare.²⁹ They are key elements that must be considered by policy makers without government compromising democratic principles. The main problem faced by democratizing states in the fight against terrorism is making a decision as to which approach to use that is acceptable and effective.

Likewise, Alex P. Schmid argues that anti-terrorism measures must be in line with policies that are consonant with the conditions of democracy.³⁰ However, in most cases, the extent to which both aims must be achieved remains the subject of debate. In the first place, to be effective in fighting terrorism, some civil liberties may end up being sacrificed. And in doing so, the state will be violating human rights—something for which human rights activists have long put Uganda in the uncomfortable spotlight.

²⁷ BBC News, “1998: U.S Embassies in Africa Bombed” August 7, 1998, http://news.bbc.co.uk/onthisday/hi/dates/stories/august/7/newsid_3131000/3131709.stm.

²⁸ Eubank and Weinberg, “Terrorism and Political Violence,” 163–164.

²⁹ Wilkinson, *Terrorism versus Democracy*, 94.

³⁰ Schmid, “Terrorism and Democracy,” 17.

a. The Neighborhood Effect

The country's location may sometimes turn out to be a geographical curse depending on the security situation in the region. John Davis notes that Kenya, for example, has a border that stretches along the Indian Ocean, which is a gateway to the rest of the world, including to terrorists.³¹ In addition, Kenya is a very close neighbor to Somalia, a country that has been involved in civil wars for more than two decades. These conflicts in Somalia have had a serious spillover effect on Kenya's internal security problems, especially from the Al-Shabaab militants. This problem is one of the biggest challenges being faced by many countries in Africa.

The remedy for this problem, according to Byman, is to transform the terrorist-breeding countries into democratic and conflict-free states.³² This is one the main objectives of the African Union Mission in Somalia (AMISOM) to pacify the country and deny terrorist the breeding ground.³³ Similarly, the Trans-Saharan Counter Terrorism Initiative, a U.S counterterrorism program based in West Africa, has been instrumental in helping in the fight against terrorism in countries that have been acting as breeding grounds for terrorists in the Maghreb.³⁴

Governments adopt and implement a whole range of policies and measures in order to fight and prevent further terrorist strikes originating from the neighboring countries. Searching out terrorists, launching strikes, punishing supporters of terrorists, improving security measures, and intensifying watchfulness measures are all parts of a large counterterrorism strategy. Thus, according to this literature, counterterrorism encompasses tactics and strategies adopted in response to terrorism incidents.³⁵

³¹ John Davis, *Africa and the War on Terrorism* (London: Burlington Ashgate, 2007), 46.

³² Byman, *The Five Front War*, 79.

³³ Cecilia H. Wiklund, *The Role of African Union Mission in Somalia* (Stockholm: FOI, Swedish Defense Research Agency, 2013), 49,
<http://www.foi.se/Global/V%C3%A5r%20kunskap/S%C3%A4kerhetspolitiska%20studier/Afrika/Hull%20Wiklund,%20The%20Role%20of%20the%20African%20Union%20Mission%20in%20Somalia,%20FOI%202013.pdf>.

³⁴ Smith, *Securing Africa: Post-9/11*, 94.

³⁵ Nacos, "Terrorism and Counterterrorism," *Terrorism and Counterterrorism*, 212.

Scholars using the neighborhood approach take the view that democratic reforms and incentives will not, by themselves, end terrorism in a given state because of the neighborhood in which the country is located. (Uganda fits this case, with its neighboring countries engulfed in perpetual conflicts.) With the neighborhood effect, Schmid writes, contemporary democracies are exceptionally susceptible to terrorist actions.³⁶ There is freedom of movement in modern democracies; people are free to come and go without the kind of close watch that often exists in closed nations. Likewise, there is freedom of association in democracy; the state does not prevent individuals with the same mind from forming a private organization to associate.

Moreover, the same open societies provide opportunities to terrorists with several targets to strike. In the same way, the legal systems in open societies require the presentation of evidence, attestation of guilt, and various due process protections before someone can be incarcerated for participating in terrorist activities as demanded by democratic principles. This fact justifies the argument of those scholars who assert that because democracies promote high levels of civil liberties, including the legal rights of the accused, terrorists are undeterred and undaunted because, if they are caught, the accused terrorists are assured of their legal rights. Schmid also points out the relative ease with which potential terrorists are able to obtain weapons and move across borders in and around the same geographic neighborhood.³⁷

A study by Mirza Daniel and Thierry Verdier concluded that, to counteract the diffusion of neighborhood terrorism, democratic governments must put into practice all-inclusive security measures.³⁸ These measures, which encompass homeland security, should be directed both within the confines of the country's borders and in the neighboring countries from which terrorism may emanate.

³⁶ Schmid, "Terrorism and Democracy," 22–23.

³⁷ Schmid, "Terrorism and Democracy," 25.

³⁸ Daniel Mirza and Thierry Verdier, *International Trade, Security and Transnational Terrorism: Theory and a Survey of Empirics*, World Bank Policy Research Working Paper 4093 Washington, DC: World Bank Research Group, Trade Team, 2006, <https://www.openknowledge.worldbank.org/bitstream/handle/10986/9282/wps4093.pdf?sequence=1>

On Uganda's military interventions in neighboring countries, Uganda's president Yoweri Kaguta Museveni, who took power in 1986, while addressing the Parliament on September 16, 1998, said that "if the neighbor's house catches fire, the fire can spread also to your own house; if there is fire in the next house you get out and see what is happening."³⁹ In support of his argument, many observers note that during Museveni's regime, new developments in the Great Lakes Region (GLR) geopolitical conflict were recorded, like the Burundi coup of 1986, the Rwanda invasion of 1990 and the subsequent genocide in 1994, and the invention of Zaire in 1996. All these incidents forced Uganda to redefine its national security interests.

As John F. Clark notes, like other interventionist states—notably the United States and Great Britain—Uganda grossly misjudges the high risk of interventions and will therefore most likely become entangled in many of its involvements well beyond the expected scale and scope. At the same time, however, he asserts that Museveni's efforts have earned him a good relationship with the Western powers.⁴⁰ This has been a result of Museveni's open condemnation of terrorist groups and the support in the fight against international terrorism.

b. The International Effect

The second approach is the *international effect*. This approach raises questions concerning the relationship between democracy and human rights at an international level. Bram B. Van Riezen and Karlijn Roex observe that the application of civil rights to all of the world's citizens or only residents of a certain state or a group of states depends on whether one adopts a nationalist standpoint.⁴¹ The rationale, according to Ghai Nodia,

³⁹ "Museveni's Address to the Sixth Parliament on the 16th September 1998, Hansard," last updated 2015, http://www.parliament.go.ug/new/index.php/component/ninjarsssyndicator/?feed_id=1&sa=U&ei=sVxtU7P0LNHhsATZn4GwCA&ved=0CCMQFjAB&usg=AFQjCNEpdE4ZK5dIytUiat1lqVxTZMrJw.

⁴⁰ John F. Clark, "Explaining Ugandan Intervention in Congo: Evidence and Interpretations." *The Journal of Modern African Studies* 39, 2 (2001), 261, doi: 10.1017/S0022278X01003615.

⁴¹ Bram Van Riezen and Karlijn Roex, "Counter-Terrorism in the Netherlands and the United Kingdom: A Comparative Literature Review Study." *Counter-terrorism; United Kingdom ; Netherlands; policy; Instrumentalist Social cosmos* URN:NBN: NL: UI: 10-1-112469 3 no.1 (2012) , 97, https://www.google.com/?gws_rd=ssl#q=Bram+Van+Riezen+and+Karlijn+Roex%2C%E2%80%9D+Cou nte.

is that people who share similar national characteristics (for example, language, ethnicity, or culture) are less likely get involved in disagreements in regard to democratic issues.⁴² The theory behind this reasoning is that in most cases, nationalism and democracy overlap because the citizens are united under one nationality.

However, from the global perspective, democracy refers to a “global citizen.” Many scholars argue that, in a time of terror, states must develop a more fluid sense of self, going beyond the issues of nationality and ethnicity to recognize being human as the first and most basic identity. This shift implies that the focus of rights shifts from the citizen to the human being. Sijursen questions whether global rights are essentially democratic and argues that there is a concern between the ideas of global rights and the principles of democracy.⁴³

c. The Legal Approach

Paul Wilkinson identifies some of the approaches that democratic states have successfully applied and managed to defeat terrorists without sacrificing the democratic process.⁴⁴ Among the approaches Wilkinson writes about are hardline and overt appeasement. He argues that even as the overt appeasement approach aims at offering terrorist concessions in form of amnesty, which automatically pardons terrorists without going through the judicial process, some terrorists still do not give up, forcing states to take the hardline approach. For example, Italy in the 1970s, despite being a democratic state, adopted the hardline approach when authorities introduced new laws to help fight the Red Army terrorists. According to Wilkinson, Italy was able to defeat these terrorists using this approach without diverting from its democratic principles. Italy’s success story against terrorism, using the legal approach, sets a precedent for the future use of the legal approach to prevent terrorist attacks in democratic states.

⁴² Ghia Nodia, “Nationalism and Democracy,” *Journal of Democracy*, 3 no. 4 (October 1992), 4.

⁴³ Helen Sijursen, “The EU’s Common Foreign and Security Policy: The Quest for Democracy,” *Journal of European Public Policy* 18, no. 18 (December 2011): 1069–1077, doi.org/10.1080/13501763.2011.615192.

⁴⁴ Wilkinson, *Terrorism versus Democracy*, 98.

On the other hand, the legal approach may backfire and cause more harm than good, especially when the government targets its own people by denying them liberal freedoms or arresting the innocent or, alternately, when the laws keep shifting to suit the interest of the state. Steve Hewitt argues that such laws not only fail to end terrorism but may actually fuel it, especially when the people become frustrated as a result of government actions—or overreactions.⁴⁵ He notes that when the British government was fighting the Irish Republican Army (IRA), it introduced law after law to facilitate the conviction of terrorists. The laws themselves did not curtail IRA terrorism, however. Instead, such laws increasingly infuriated the citizens who accused the government of torturing people. Worse, the IRA used these laws as an excuse to advance its cause by portraying itself as the defender of the minority.⁴⁶ As Nacos notes, British laws have greater power in dealing with acts of terrorism to the extent of detaining a terrorist without any criminal charge.⁴⁷ But the British experience also demonstrates some of the pitfalls of flexing the legal framework to achieve particular counterterrorism goals.

D. POTENTIAL EXPLANATIONS AND HYPOTHESES

Democracy has been promoted in many countries as a means to fight terrorism; the Bush Administration and its defenders and allies advanced this position in Iraq and Afghanistan. The premise behind this theory is that terrorist grievances are usually about disenfranchisement, injustice, inequality, lack of economic opportunities, marginalization, and government abuse of power. Democracy, as this theory assumes, offers people avenues through which power sharing, justice, rule of law, equal opportunity, participation, and freedom from government abuse can be achieved. Each of these conditions translates into democratic principles and practices that protect individuals' basic rights; promote the rule of law, freedom of expression, and regular elections; and separate the powers into the executive, legislative, and judicial branches for checks and balances, mutual accountability, and transparency. Thus, democracy

⁴⁵ Steve Hewitt, *The British War on Terror: Terrorism and Counter-Terrorism on the Home Front Since 9/11* (New York: Continuum International Publishing Group, 2008), 19.

⁴⁶ Hewitt, *The British War on Terror*, 16.

⁴⁷ Nacos, "Terrorism and Counterterrorism," *Terrorism and Counterterrorism*, 214.

establishes conditions under which the citizens can freely participate in their governance without being oppressed—and without resorting to violence.

A victory against terrorism is not about the destruction of the terrorist, as Audrey Kurth Cronin notes, but winning over the hearts and minds of the local population through negotiations with terrorist groups.⁴⁸ Democracy is both the means and the end of this process.

The NRM government began the path of democratization immediately when it assumed power in 1986.⁴⁹ From that time, the country has been able to safeguard peace and security of life and property throughout the country, safeguard and consolidate the democratic and constitutional order, consolidate and improve such social services as schools and health-care services, and conduct general elections under the system.⁵⁰ These programs have been hampered by some cases of insecurity in some parts of the country, leading temporally to the suspension of programs in the affected areas. Terrorism and insurgency thus limit democratic progress in some of the areas that most need these gains. Moreover, the use of the military in the fight against terrorist groups not only strengthens the appeal of terrorists or insurgents, but in some other cases, it may end up introducing new cycles of terrorism.

By the same token, none of the democratic reforms and other incentives the government has put in place will end terrorism in the country when countries neighboring Uganda are still engulfed in perpetual conflict. For one thing, Uganda has become actively involved in perhaps all the major conflicts of the GLR of Africa—Rwanda, Burundi and the Congo, even extending to those in the Greater Horn of Africa, the Sudan and Somalia being the present cases. Uganda's geographical location (surrounded by countries that are conflict-prone) implies options for terrorists with safe havens on either

⁴⁸ Audrey Kurth Cronin, *How Terrorism Ends* (Oxford: Princeton University Press, 2011), 37. To be sure, in many cases, terrorists take advantage of the grace period during negotiations to reorganize and replenish their weapons and supplies. The LRA terrorists have used this tactic on several occasions whenever they run short on logistics or under intense pressure from government enforcement agencies.

⁴⁹ Yoweri Kaguta Museveni, *Sowing The Mustard Seed: The Struggles for Freedom and Democracy in Uganda* (Kampala Uganda: Moran Publishers, 2007), 195.

⁵⁰ Tarsis Bazana Kabwegyere, *People's Choice, People's Power: Challenges and Prospects of Democracy in Uganda* (Kampala Uganda: Fountain Publishers Ltd 2000), 140.

side of the border. A terrorist who has liberty of action in a sanctuary provided in the neighboring countries will not give up such freedom in preference to government democracy, which also subjects him or her to the rule of law.

This conundrum complicates Uganda's response to insurgency and terrorism because it inspires a foreign policy that may not accord with the ideals of global citizenship,⁵¹ and it diverts precious resources—time, money, and effort—from those programs, policies, and institutions that would advance Uganda's democratization.

E. RESEARCH DESIGN

In order to find out what democratic governments do to avoid or mitigate the ill effects of counterterrorism while trying to achieve satisfactory results against a terrorist threat, I focus on case studies in which state policies against terrorism failed to bring the intended results even after a long period of time. This focus also helps clarify how to balance counterterrorism and protect civil liberties of human beings. In addition, I also use other scholarly information and other sources like government reports that contain information about government policies that could be relevant to this study.

F. THESIS OVERVIEW AND DRAFT CHAPTER OUTLINE

The thesis has five chapters. The first contains the introduction, which details the general background information about the relationship between counterterrorism policies implemented by governments and how they affect the process of democratization.

Chapter II maps out the development of counterterrorism efforts in Uganda, analyzing the background, the major constitutional reforms, and other legal changes, plus the changes in Uganda's security organizations that are a response to terrorism. It discusses Uganda's counterterrorism efforts in the areas of criminal justice model and the military model, which takes terrorism as an act of radical warfare with the dispatch for response placed on the military and entailing the use of the troop development.

⁵¹ Smith, *Securing Africa: Post-9/11*, 134.

The following chapters look at the cases of United States, especially the USA Patriot Act, which suspended rights and civil liberties in unprecedented manner, and the Authorization for the Use of Military Force (AUMF); and the United Kingdom, where the Anti-Terrorism Crime and Security Act led to indefinite detention without trial measures for non-nationals suspected of being capable of, or implicated in, terrorist acts. In both cases, the focus is on the negative effects of counterterrorism on democratic institutions, ideals in these countries, and, by extension, ideals in Uganda as it democratizes with the United States and Britain as its examples. In the concluding chapter, all the findings of the study are gathered, and I make recommendations on how to deal with terrorism in a democratic state.

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II. COUNTER-TERRORISM POLICIES IN UGANDA

Uganda's counter-terrorism measures, dealing with both domestic and international terrorist threats, fall into three different categories: the criminal justice model, the military model, and coordination with international conventions. In the criminal justice model, terrorism is perceived as a crime, with the burden of response falling on the state's regular criminal legal system. In the military model, terrorism is regarded as an act of warfare placed within the remit of the armed forces. A third category leverages international conventions in tackling acts of terrorism transnationally.

The models matter because countering terrorism poses significant challenges to the protection and promotion of democratic principles. Over the years, terrorism has increased in both sophistication and scope, taxing the criminal justice systems and the militaries of all nations alike. The growing terrorist threat has also prompted international organizations to redesign their mission to account for the changing security environment emanating from terrorism threats. This chapter, therefore, analyzes the Republic of Uganda's counter-terrorism response in terms of these models. It investigates the criminal-justice and military systems in collaboration with intelligence coordination to determine whether they have been effective and efficient in dealing with terrorism. It also discusses Uganda's compliance with international counter-terrorism conventions, emphasizing Uganda's reasons for compliance.

A. UGANDAN LAW AND THE CRIMINAL JUSTICE MODEL

The criminal justice model considers terrorism to be a criminal act and prescribes the use of law to fight it.⁵² The law enforcement approach to combating terrorism involves legislation, criminal prosecution, and incarceration.⁵³ It begins with an understanding of terrorist activity as a form of criminal conduct, which has implications for interventions aimed at tackling it. The conventional institutions for fighting crime—

⁵² Nadav, Morag, *Comparative Homeland Security Global Lessons* (New Jersey: John Wiley & Sons Inc, 2011), 65.

⁵³ Wilkinson, *Terrorism versus Democracy*, 113.

the police and the judiciary—are also those responsible for combating terrorism. The police have the primary responsibility of enforcing anti-terrorism laws in collaboration with other state agencies involved in the criminal justice system. Both institutions are supported by intelligence, which is the first line of defense against any threat to national security.

1. Laws and Legislation

Uganda, like other countries using the criminal justice model, has taken a measured approach by legislating to prevent and punish terrorism. The basis of this approach is a framework of laws that define terrorism, its predicates, and the appropriate measures to combat it.

a. Anti-Terrorism Act, 2002

In wake of the 1998 bomb attacks in Kampala, perpetrated by ADF militants, as well as the 9/11 attacks in the United States, Uganda enacted the Anti-Terrorism Act of 2002 as the main legislative weapon for fighting terrorism in the country and beyond.⁵⁴ The act defines terrorism as “any act of violence or threat of violence carried out for purposes of influencing government or intimidating the public and for any political, religious, social, and economic aim, indiscriminately without due regard for the safety of others or property.”⁵⁵ The law supersedes the Penal Code Act, which was initially used for formulating various penalties for suspects who committed offenses of capital nature.

All offenses related to terrorism are handled under the Anti-Terrorism Act. The Anti-Terrorism Act criminalizes anyone involved in running a terrorist organization or any organization that promotes, publishes, and disseminates news or materials that facilitate terrorism activities.⁵⁶ In line with this section of the act, the Ugandan government has been able to list four terrorist organizations. Under the second schedule

⁵⁴ Prior to 2002, the Fire Arms Act of 1970 had provided for the regulation of fire arms and ammunition; the Penal Code Act, Section 23–25, had managed punishment of treason and its concealment.

⁵⁵ Anti-Terrorism Act 2002 passed into an Act of Parliament in 2002, <http://www.ulii.org/content/anti-terrorism-act-2002>.

⁵⁶ Ugandan Anti-Terrorism Act, Section 9.

of the act, the Lord's Resistance Army (LRA), Lord's Resistance Movement, Allied Democratic Forces/Front, and Al-Qaeda have been gazetted as terrorist organizations.⁵⁷ Furthermore, the act criminalizes anyone who supports or assists a terrorist organization, and also penalizes whoever makes any contribution of funds or any other resource to a terrorist organization.

The act provides for coordination between the law enforcement institutions and judicial jurisdiction over terrorism. It also permits terrorism investigations, interception of communications, and surveillance as key parts. Financial intelligence has gained value as a key tool in fighting terrorism.⁵⁸ The central idea in this approach is that if terrorist organizations are starved of financial resources, their capability to carry out terrorist activities will be totally degraded.

The Uganda Anti-Terrorism Act criminalizes terrorism but contains neither regulatory nor enforcement mechanisms.⁵⁹ This is true because in some cases it becomes difficult to practically monitor and enforce the law due to lack of required capacity in terms of skilled manpower and equipment. The new law also paints terrorism in broad strokes—which may cover more offenses than its proponents supposed. For example, the act defines acts of terrorism as manufacturing, handling, or detonating a lethal device in a public place; involvement in murders, kidnapping, abduction, or maiming of any person;⁶⁰ or actions that attempt to influence the government or intimidate the public.⁶¹ The law does not distinguish between plainly criminal acts and terrorist ones and, thus, seems to bring many acts into the category of “terrorism,” whether or not they were so conceived or undertaken.

⁵⁷ Anti-Terrorism Act (2002), Section 10(1)(6).

⁵⁸ Nacos, “*Terrorism and Counterterrorism*,” *Terrorism and Counterterrorism*, 168.

⁵⁹ Tabu Butagira, “Porous Borders, Graft Expose Uganda to Terrorist Attacks—US,” *Monitor Newspaper*, June 3, 2013, <http://www.monitor.co.ug/News/National/Porous-borders--graft-expose-Uganda-to-terrorist-attacks-US/-/688334/1870446/-/mlty1g/-/index.html>.

⁶⁰ Anti-Terrorism Act of Uganda, Section 7.

⁶¹ *Ibid.*

b. Anti-Money Laundering Act

Money laundering fosters criminal activities and threatens the progress of financial systems. To strengthen the Anti-Terrorism Act, an appropriate anti-money laundering legal framework regulating the formal and informal financial services industry and trade services is a prerequisite for the successful disruption of financial flows to terrorists.⁶² Uganda enacted the Anti-Money Laundering Act in 2013 to combat such activities.

Section 3 of the act proscribes financing of terrorism activities as a crime. Any irregular transactions suspected to be connected to a terrorist finance fall under the Act. The Bank of Uganda subsequently issued guidelines to all financial institutions to follow especially the “know your customer principle” and requires bank personnel to report suspicious transactions and financial activities,⁶³ aim to combat terrorism.

The Anti-Money Laundering Act covers crimes committed within Ugandan territory as well as those committed outside the country. Moreover, the act is applicable whenever the crime is committed, irrespective of the nationality of the perpetrator. This extensive reach is useful in tackling issues created by cross-border crime, particularly the financing of international terrorism.

The use of financial interdiction⁶⁴ to deny terrorist organizations access to financial resources faces a number of practical and operational challenges. In the first place, new modes of transmitting money are constantly evolving, especially the Internet and other informal methods like the Hawala system. The major challenge, however, lies with the proliferation of informal systems and mobile money services operations⁶⁵ in Uganda, which may act as conduits of terror-related financing opportunities. Money

⁶² Nacos, “*Terrorism and Counterterrorism*,” *Terrorism and Counterterrorism*, 169.

⁶³ Statutory Anti-Money Laundering Regulations of 2010.

⁶⁴ Under Section 18 of The Anti-Money Laundering Act, the government set up a Financial Intelligence Authority (FIA), which is an independent institution. This institution coordinates with the Financial Action Task Force (FATF), a global institution responsible for fighting money laundering in the whole world.

⁶⁵ Mobile Money Service is operated by Telecom companies, with some partnering with banks. This is e-money available to a mobile phone user.

wired through mobile money services can be withdrawn by anyone without identification across the country at any service point. This unrestricted access to funds, coupled with the informal nature of the economy, means that a significant amount of Uganda's economic life, including potential terrorism-related⁶⁶ transactions, transpires outside the formal banking systems.

Although the law criminalizes contributions to terrorist organizations, Brigitte L. Nacos points out that some organizations have been providing conduits through which terrorists access funds, a unique situation that has been difficult to deal with. Relatedly, intelligence reports suggest that some Islamic charities may be the sources of terrorism funding in the Horn of Africa.⁶⁷ In an event where some organizations in the country are suspected to be conduits of terrorism financing, the act empowers the government to have them deregistered and their bank accounts frozen.⁶⁸

c. The Interceptions of Communications Act 2010

The 2010 Interceptions of Communications Act and its regulations enhance the Anti-Terrorism Act by providing for lawful surveillance/interception of communications in Uganda.⁶⁹ The law requires intelligence agencies to apply for warrants to monitor and or intercept communications and mandates all telecommunications service providers to register their clients. Surveillance includes interception of letters and postal packages of any person; interception of telephone calls, faxes, emails, and other communications made or issued by or addressed to a person; and monitoring of meetings of any group of persons. Other powers include the surveillance of movements and activities of any person, electronic surveillance of any person, access to bank accounts, and searching of the premises of any person. The act says that the purposes for which interception or surveillance may be conducted include the safeguarding of the public interest, prevention of the violation of fundamental and other human rights and freedoms of any person from

⁶⁶ Nacos, "Terrorism and Counterterrorism," 168.

⁶⁷ Shariah Finance Watch available at <http://www.shariahfinancewatch.org/blog/>

⁶⁸ Anti-Money Laundering Act, Section 61 (I) (4).

⁶⁹ Regulation of Communications Act, 2010 HC 18, September 3, 2010.

terrorism, prevention or detecting the commission of any offence, and safeguarding the national economy from terrorism.

2. Other Legal Reforms

To strengthen counterterrorism policies put in place, it is necessary to make structural reforms so as to provide a framework through which such policies can be implemented and supported. As a result, Uganda has had to make structural changes in some of its institutions in order to adequately meet the demands of the newly created laws. This section discusses the structural reforms in border controls, police forces, and legal coordination within East African region through which a number of legal actions have jointly been undertaken.

a. Border Control

Despite the legal framework in place and cooperation among partner states, there is a problem of movement of people across the borders, encouraged and exacerbated by the tribal linkages between the people on either side of the borders. After all, the borders of most African states today owe to the boundaries between colonial areas in the 19th and 20th centuries. As such, ethnic boundaries do not coincide with state borders, and groups regularly traverse the state borders.

This constant fluidity is further aggravated by the porous borders of Uganda.⁷⁰ This kind of movement allowed terrorists to establish cells and carry out attacks undetected. Cases have been registered where some of those arrested and charged with terrorism offenses in Uganda had entered the country without travel documents. They passed through unofficial entry points along the borders with Kenya and South Sudan and boarded vehicles to Kampala; Al-Shabaab and Al-Qaeda operatives have exploited these weaknesses to move easily and freely into Uganda and in the region.⁷¹ The problem of porous borders is further compounded by the laxity of immigration control at various border entry points, and the poorly equipped, corrupt, and poorly paid security personnel.

⁷⁰ Geoffrey B. Kambere, "Countering Al-Shabaab: A Case to Minimize Transnational Terrorist Threats against Uganda" (Master's thesis, Naval Postgraduate School, 2011).

⁷¹ Ibid.

Uganda is a democratizing state, but it is surrounded by neighboring states that are engulfed in enduring internal conflicts, which in their turn have created security problems for Uganda. Uncontrolled populations, especially immigrants, as well as internally displaced and stateless persons, all create hubs for the spread of radical conspiracies that both impede stabilization and export terrorism to other targets and audiences.⁷² For example, the inability of the Kenyan government to control its borders with a country like Somalia has enabled the Al-Shabaab and Al-Qaeda terrorists to carry out attacks against Uganda.

Monitoring porous borders is an extremely difficult, if not impossible, task. The LRA rebels long operated in the largely lawless border regions of the DRC, Central Africa Republic (CAR), and South Sudan. The U.S. Special Operations Commander for Africa, Rear Admiral L. Losey, indicated that the LRA leader Joseph Kony has been able to elude capture as a result of taking advantage of porous borders.⁷³ This point underscores the great need for capacity and improvement in security measures to enable immigration and border control officials to identify and apprehend suspects attempting to enter or exit the country.

In sum, international judicial cooperation against terrorism, as Wilkinson notes, remains weak because of the differences in legal codes and procedures, and the absence of extradition treaties between states. Moreover there are enormous variations in the levels of specialist knowledge of terrorism in national judicial systems. Uganda has few lawyers specializing in terrorism and at the same time does not have special prisons for keeping terrorist suspects. The lack of such facilities and capacity may undermine Uganda's efforts to use law enforcement as a tool for fighting terrorism.

⁷² Martha Crenshaw, "Political Explanations" In *Addressing the Causes of Terrorism*, the Club de Madrid Series on Democracy and Terrorism 1 (2005), 14 . <http://safe-democracy.org/docs/CdM-Series-on-Terrorism-Vol-1.pdf>.

⁷³ Rear Admiral L. Losey is a current commander of Combined Joint Task Force-Horn of Africa (CJTF-HOA). It assists in building regional security capacity and relationships in Africa.

b. *Police Restructuring (Reforms)*

Wilkinson notes that liberal democracies entrust police with the task of combating terrorism on top of its routine duties of maintaining law and order in the country.⁷⁴ In addition, Wilkinson goes further and underlines the importance having a specialized anti-terrorism police unit within the security services to manage terrorism threats effectively. In order to augment the legal systems, the Uganda Police Force underwent through reforms and created a new Directorate of Counter-Terrorism (CT) with Aviation, Tourism, and Crime Intelligence among the sections under it. These reforms were meant to have an enhanced police response to terrorism threats. As the Uganda police adapted new reforms, the new unit created still faces some problems. In the first place, the unit lacks specialized training in management of such critical specialized areas as crisis response team and bomb disposal.⁷⁵ This bottleneck is still hampering the effectiveness of new police counter-terrorism unit.

The critical question is whether Uganda has a police force that is competent to deal with the threat of terrorism. The force lacks the enabling infrastructure that is important in fighting terrorism. Other than the lack of enabling infrastructure, the force is underfunded, and yet without funds, the force cannot acquire the necessary skills or equipment to enable it to perform its functions adequately.

To deal with the problems of limited capacity and competency, Uganda has sought help from its allies. The United States has responded by providing financial support that has been used to build a well-equipped forensic laboratory and also facilitated training programs to the force.⁷⁶ In addition, the Federal Bureau of Investigation (FBI) provided substantial resources that helped in the investigations of the 7/10 terror bombings in Kampala. This assistance has not only been useful in capacity building, but was also timely and helpful to the counter-terrorism police because through such assistance, CT was able, for example, to apprehend all the 7/10 perpetrators.

⁷⁴ Wilkinson, *Terrorism versus Democracy*, 113.

⁷⁵ *Monitor Newspaper*, "Counter-Terrorism Takes Over Four Police Units," September 30, 2011.

⁷⁶ Beth Elise Whitaker, "Compliance: Africa and the Counter-Terrorism Regime," *Review of International Studies* (2010), 653, 36,693-662, doi 10. 1017/S02602151000641.

A well-equipped counter-terrorism police unit is instrumental in handling terrorism related cases more especially in a democratizing state, where some of the institutions are not strong enough to handle terrorism-related cases. In Uganda's case, counter-terrorism police have the mandate to investigate, arrest, and carry out a detailed scene examination, especially the recovery of evidence from bomb scenes. This kind of evidence helps the judiciary to build good cases against the accused terrorists, who otherwise would end up not being convicted due to lack of incriminating evidence.

B. MILITARY MODEL

The military model is based on the idea that the use of military force and methods can effectively undermine terrorism. It emphasizes the marshalling of all military means in order to quash a terrorist threat or action.⁷⁷ From this perspective, terrorism is regarded as an act of warfare or insurgency. The military model does not work in isolation, however; it must be supported by intelligence efforts in order to be effective.

1. Military Intervention

In Uganda, military offensives have been carried out against the LRA and ADF particularly in the northern and western parts of the country. As a result, the LRA was pushed to the extreme areas of the CAR; and the ADF, to the jungles of the DRC.⁷⁸ Although this intervention could have brought relief to the people in northern and western Uganda, the unstable political climate in the neighboring countries of DRC and South Sudan have provided safe havens for these elements. However, the use of diplomacy has enhanced Uganda's position to allow the Uganda People's Defence Force (UPDF) to pursue these groups across borders.⁷⁹

The use of military power to dismantle terrorist cells, especially in counterinsurgency strategies, has proved to be the weapon of choice for many

⁷⁷ Cronin, *How Terrorism Ends*, 115.

⁷⁸ Okumu, *Domestic Terrorism in Africa*, 77.

⁷⁹ Simon Mulongo, "Report of Conflict Assessment in the East Africa Partner States, 2010," East African Community, April 22, 2010, https://www.academia.edu/4102864/Report_of_Conflict_Assessment_of_EAC_Partner_States_fin.

countries,⁸⁰ including Uganda. However, some scholars have questioned the efficacy of the military approach. For example, Richard English, in his book *Terrorism: How to Respond*, contends that a militarized response is unlikely to defeat terrorism. He argues that preemptive action by security forces cannot succeed in taking out every potential terrorist but instead infuriates the terrorists who act in retaliation.⁸¹

These observations about the efficacy of the military model in undermining terrorism are supported by experiences of Uganda. In Uganda, military pressure on the LRA, ADF, and Al-Shabaab has failed to suppress their operations. While it may be argued that the LRA and the ADF have been weakened, they still constitute a serious challenge to the security of the state and civilians in the region. The military approach in Uganda has been associated with killing some members, especially top leaders of the terrorist groups. But as Byman observes, killing some members of terrorist and insurgents groups is only successful in the short term because those leaders are easily replaced.⁸² Thus, little is gained by removing the top leaders of a given group.

Uganda's military strategy has faced formidable challenges. In the first place, the complex natures of the LRA and ADF, and the versatility with which they can traverse international borders, have overstretched the Ugandan military both in terms of personnel and resources. Second, geopolitical factors also have limited the capacity of the Ugandan military to disrupt the LRA and ADF terrorist groups. For instance, efforts to pursue the LRA and ADF in the jungles of South Sudan and DRC have been dented by these countries' refusal to grant the Ugandan troops access to areas affected by the terrorists. The DRC government has a deeply engrained suspicion of the Ugandan army's intentions on its soil, which represents a major hindrance in the fight against the LRA and ADF, which groups use DRC territory as a safe haven.

⁸⁰ Jason Burke, *The 9/11 Wars* (New York: Penguin Books, 2012), 25.

⁸¹ English, *Terrorism*, 54.

⁸² Byman, *The Five Front War*, 113.

The United States supports Uganda's military approach to defeating the LRA. In May 2010, the U.S. Congress passed the Disarmament Bill.⁸³ This measure was followed by the deployment of 100 combat-equipped U.S. troops on October 12, 2011. General Carter Ham, the head of the U.S. military's Africa Command, asserts that the troops will remain deployed until the LRA group is totally defeated.⁸⁴ U.S. support has provided Uganda government with a strong counter-terrorism partnership for fighting terrorists, and, hopefully, the LRA will be eliminated in the region.

In addition, Uganda's involvement in the African Union Mission in Somalia (AMISOM) under the auspices of the African Union's (AU) efforts to defeat terrorism in Somalia and the Horn of Africa raises further challenges in its efforts to defeat terrorist organizations in Uganda. Uganda is a leading contributor of troops to the AMISOM, whose current deployment, however, is too small and underequipped to effectively defeat terrorist groups, such as Al-Shabaab, operating in Somalia. Al-Shabaab has on many occasions used roadside and suicide attacks against AMISOM troops, resulting in many Ugandan military fatalities. Moreover, there is mistrust between AMISOM and the Somali National Transitional Forces (TFG), which further exacerbates the problem and which, to some extent, has hampered Uganda's efforts to fight Al-Shabaab in Somalia.

2. Intelligence Coordination

Intelligence is an important component in helping to combat terrorism. The Ugandan intelligence community has been credited for being able to thwart Al-Qaeda attacks against the U.S embassy in Kampala in August 1998.⁸⁵ This success was attributed to the coordination of East African intelligence services in sharing and exchanging of intelligence information about the terrorist networks that were operating in the region.

⁸³ Andre Le Sage, "Countering the Lord's Resistance Army in Central Africa," Strategic Forum, <http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?lng=en&id=134652>.

⁸⁴ *Washington Post*, "U.S Troops to Stay in Uganda until Kony Is Found," November, 21, 2011.

⁸⁵ David H. Shinn, "Al-Qaeda in East Africa and the Horn," *The Journal of Conflict Studies* 27, no. 1 (2007), <http://journals.hil.unb.ca/index.php/jcs/article/view/5655/6658>.

The security forces have formed a Joint Anti-Terrorism Task Force (JATT) as the coordinating interagency unit to enhance the fight against terrorism.⁸⁶ JATT is composed of personnel from the military intelligence agencies, police, the Internal Security Organization (ISO), and the External Security Organization (ESO). Before the 1999 attacks, the security forces police, military, intelligence agencies, and security private firms worked independent of each other. The lack of coordination led to duplication of roles and uncoordinated strategies to the management of terror attacks. For instance, between 1997 and 2002, the ADF network was able to detonate more than 48 explosive devices, killing at least 50 and injuring more than 200 people.⁸⁷ At that time, there was no security agency specifically detailed to handle the emerging threat of terrorism. Extensive coordination among government institutions and intelligence agencies, according to Wilkinson, produces precise intelligence.⁸⁸ Only when effective coordination of intelligence services and resources is established can the authorities hope to undermine the operational capabilities of the terrorists groups, a matter that JATT aims to solve.

To strengthen the efforts of JATT, the police component reinvigorated the community policing approach so as to increase the participation of local communities in general crime prevention but with more focus on terror threats. The public is the first line of defense as “watch guards” for any suspicious elements in their neighborhood and report to police. This plan requires the population to be vigilant because the security agencies will not be everywhere at all times. This drive has been through mass mobilization and sensitization of the local people over the national radio, as well as using any other form of education, information, and communication materials and other sources.

But there are challenges to terrorism-related intelligence gathering. The marked lack of collaboration and coordination among the various intelligence and security organs can undermine efforts to combat terrorism. The lack of collaboration and coordination

⁸⁶ Whitaker, 652.

⁸⁷ James J. F. Forest and Jennifer Giroux, “Terrorism and Political Violence in Africa: Contemporary Trends in a Shifting Terrain” *Perspectives on Terrorism* 5, no. 3–4 (2011), <http://www.terrorismanalysts.com/pt/index.php/pot/article/view/152/html>.

⁸⁸ Wilkinson, *Terrorism versus Democracy*, 106.

among intelligence services not only affects Ugandan intelligence services but has also been highlighted by many scholars as one the main intelligence failures that contributed to the 9/11 terror attacks.

Yet the development of effective intelligence and cooperation among intelligence agencies has been earmarked as critical in preventing attacks.⁸⁹ Other than depending on internal intelligence, Uganda continuously shares intelligence information with other particular foreign partners. The Ugandan government observes and cooperates closely with other countries on intelligence sharing of terrorist organizations and their activities. However, the level of cooperation and collaboration among governments and states may be undermined because of mistrust and reluctance to share certain information. Consequently, intelligence may flow in one direction rather than in a quid-pro-quo fashion.

Wilkinson observes that such mistrust often impedes an effective international response to terrorism. Further hindrances include serious wars and bureaucratic tendencies, coupled with the fear to reveal sensitive information and sources.⁹⁰ As a result, intelligence on terrorist is not given in a timely manner to other services at home and abroad. This delay of information diffusion undermines counterterrorism efforts.

In all, the use of a military approach does not resonate well in the fight against terrorism, because military actions create situations that make the fight against terrorism much harder as they seek to balance between democracy and combating terrorism. Military actions lead to loss of lives, which otherwise would have been avoided. It also subjects the population to the excesses of war that emerge during the course of war. These actions are exhibited in the form of atrocities and violation of human rights committed against the population. Additionally, some of the military offensives conducted outside the borders of country have in turn created strained relationships with the neighboring states. For instance, in one of the offensives against the ADF, the government of Uganda invaded the DRC with the aim of denying the ADF access to the

⁸⁹ Byman, *The Five Front War*, 83.

⁹⁰ Wilkinson, *Terrorism versus Democracy*, 110.

DRC as a springboard to attack Uganda. However, this action infuriated the DRC, which took such as action as an act of aggression. Later on, the DRC accused Uganda of invading, a case that has put Uganda on the spotlight for taking illegal action against another state.⁹¹

C. COMPLIANCE WITH INTERNATIONAL COUNTER-TERRORISM CONVENTIONS

Uganda has signed numerous international counter-terrorism conventions with a desire to implement international obligations aimed at combating international terrorism. The conventions were bargained mainly through the United Nations and other international organizations.

1. The Signed International Conventions

Uganda signed and ratified the following international conventions for preventing acts of terrorism: the Conventions for the Suppression of Unlawful acts against the Safety of Civil Aviation, signed on September 16, 1976; the Convention for Suppression of the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents, signed on December 4, 1979; and the Convention against the Taking of Hostages, signed on November 10, 1980. Through these conventions, Uganda has been placed in a secure position against any terrorist incident, especially on the side of aviation and its citizens on board. This compliance has greatly improved Uganda's capacity in the fight against transnational and domestic terrorism on top of being a member of international conventions on terrorism. In addition, Uganda is an ally of United States of America and other Western powers that are in the forefront of fighting terrorism. This alliance has helped Uganda improve its counter-terrorism capability and capacity building through training its personnel in various skills and knowledge.

Additionally, at the helm of international counter-terrorism conventions lies the UN Counter-Terrorism Committee (CTC), formed in 2001 to monitor the implementation of UN Security Council Resolution 1373. Accordingly, UNSCR 1373 mandates all

⁹¹ Peter Nyanzi, "Uganda Found Guilty of Invading and Looting Congo," Daily Monitor, December 20, 2005.

nations that are members of the UN to have enabling laws, including creating laws that criminalize terrorism-related offenses.⁹² As a result of this resolution, many countries, including Uganda, have established anti-terrorism acts to deal with terrorism-related cases and are also required to submit periodic reports to the CTC on their efforts to criminalize, prevent, and punish terrorism-related activities.

At the regional and sub-regional levels, Uganda is a member of several bodies and has adopted agreements and protocols to tackle the dangers of terrorism. The organization most related to Uganda is the Organization of African Unity (OAU), the Convention on the Prevention and Combating of Terrorism espoused in 1999. Since 9/11, the African Union (which succeeded the OAU) has reaffirmed its commitment to combating terrorism through a protocol of the 1999 convention. Even though the regional agreements are limited in the use of force in the fight against terrorism, they represent another commitment that is very profound in response to terrorism. The most obvious is the compliance with the international legal instruments and financial muscle support.

At the present time, Uganda is cooperating with other nations in an effort to combat terrorism in regard to sharing intelligence information, joint operation, and training exercises. In line with international efforts, Uganda was among the first countries to support the U.S. war on terror when the United States attacked Afghanistan and Iraq in the fight against terrorism.⁹³ Thus, Uganda benefited from the support that the United States extended to Kenya and Tanzania in the improvement of the aviation security and borders controls and regulations.⁹⁴ The support has greatly reduced the level of threats to the aviation industry, which has been a favorable target to the terrorists.

On the other hand, detractors have been accusing the government of “doing mercenary work in exchange for financial support and other forms of foreign aid.”⁹⁵ As a result, Uganda has been associated with U.S. policies, making it vulnerable to terrorist

⁹² James Beckman, Comparative Legal Approaches, *Comparative Legal Approaches to Homeland Security and Anti-Terrorism* (Burlington: Ashgate Publishing Company, 2007).

⁹³ Whitaker, 652.

⁹⁴ Ibid.

⁹⁵ Ibid.

attacks. Nonetheless, by and large, Uganda's level of compliance with the international counter-terrorism conventions has been quite high.

2. The International Framework

Terrorism is multinational and crosses borders. True regional efforts have been put in place to combat terrorism in the East African region with occasional support from one another and the greater extent in all states in the Great Lakes Region. However, not all states in the GLR have laws that can manage terrorism in its current form.⁹⁶ Paul Wilkinson argues that much of anti-terrorism legislation is designed to “increase the level of protection of life and property by providing law enforcement authorities with the powers needed to assist them in the apprehension and conviction of those who commit crimes of terrorism.”⁹⁷ As such, it is important for countries facing the problems of terrorism to have legal mechanisms in places that enable them to deal with transnational terrorists.

International cooperation is important in the fight against terrorism because, in most cases, terrorists operate with and within different countries. Situations may emerge requiring states to share information on a terrorist incident or a need for extradition of a terrorist.⁹⁸ Here, the criminal justice model plays an important role in instituting the laws that deal with both domestic and transnational terrorism. Nadav argues that the synchronization of anti-terrorism laws among democratic states lessen the burden of fighting terrorisms because similar laws will be used to deal with terrorism.⁹⁹ The significance of synchronizing anti-terrorism was evidenced during the July 2010 Kampala bombing. In this attack, the perpetrators were found to be the citizens from the East African countries and, therefore, handling those suspects did not present a lot of legal complications.

⁹⁶ East African Community Partner States establishment of the EAC in the region.

⁹⁷ Wilkinson, *Terrorism versus Democracy*, 113.

⁹⁸ Morag, *Comparative Homeland Security Global Lessons*, 69.

⁹⁹ Ibid.

D. CONCLUSION

Terrorism is an extreme form of warfare that presents complex problems to any country facing it. The main problem of dealing with terrorism, especially in democratizing states, is trying to prevent the wrongs without violating civil liberties. This is particularly true because the general public may perceive government actions in countering terrorism as an infringement on civil liberties. The policies adopted to deal with the threat of terrorism while continuing to defend and uphold democratic principles are applied within the legal framework that covers the military and the international convention. Inasmuch as these approaches have attempted to deal with the problem of terrorism in the country, the approaches still face some limitations in regard to their application.

Table 1 ranks the efforts, effectiveness, and challenges of laws and institutions as low, medium, or high based on their performance in terrorism prevention:

Table 1. Efforts, Effectiveness, and Challenges of Laws and Institutions

Laws and Institutions	Efforts	Effectiveness	Challenges
Anti-Terrorism Act of 2002 - Judicial - Enforcement - Legislative	High	Medium	High
Interception of Communications Act of 2010 - Judicial - Enforcement - Legislative	High	Medium	High
Anti-Money Laundering Act of 2013 - Judicial - Enforcement - Legislative - Banks	Medium	Not yet determined	N/A
Border Control - Immigration - Enforcement	Low	Low	High
Police Reform - Legislative - Enforcement	Medium	Medium	High
Military Intervention - Military - Legislative - Judicial	High	High	Medium
Intelligence Coordination - Legislative - Judicial - Enforcement	High	High	High
Compliance with International Conventions - International Organizations (AU, UN)	High	High	Low

The judicial system in Uganda is still in its infancy, so it cannot effectively preside over complex terrorism cases—not least because there are no competent judges to handle terrorism-related cases. In addition, Uganda lacks experienced and professional enforcement officers to carry out thorough investigations and come out with incriminating evidence to help judges decide such cases. This circumstance is worsened by the high degree of secrecy with which terrorists plan and execute their missions, hence making it cumbersome for enforcement officers to secure incriminating evidence against terrorist suspects.

The complex nature of terrorist conduct forces security agents to employ methods to extract information, which in the process may lead to a violation of human rights. Whereas the Ugandan constitution stipulates that suspects should be produced in courts within a mandatory period of 48 hours, this contradicts the Anti-Terrorism Act, which advocates holding terrorist suspects for a longer period. This is done to enable enforcement officers conduct detailed investigations that can lead to a successful prosecution of terror suspects. This contradiction, coupled with other challenges, makes some of the approaches fail to attain the intended objectives in the fight against terrorism in Uganda.

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III. UNDERSTANDING TERRORISM IN THE LEGAL PERSPECTIVE: THE U.S.-UK LEGISLATIONS AND THEIR RELATIONSHIP WITH CIVIL LIBERTIES

This chapter aims to understand the legal approaches and experiences that established democracies bring to bear in tackling the problem of terrorism. This understanding will help inform decision-makers and other scholars about how legal instruments can be used or developed by democratizing countries like Uganda in making decisions and taking legal actions against terrorist acts.

The United States and the United Kingdom serve as good examples for several reasons. In the first place, both countries have been strongly affected by terrorist activities, which put them on the forefront in the fight against terrorism. Second, both countries are good models of established democracies with which Uganda has a long-established relationship. Uganda, as a former British colony, has a good reason to follow UK laws because Uganda's laws were drawn on the British legal system—much as with the United States. Indeed, all three states embrace a common-law system, which means their legal systems have more in common with each other than they might share even with their closer neighbors and allies if the latter follow a code-law or positive-law system. Third, and most important, both countries have had a long history of fighting terrorism, which gives them experience that democratizing states can fall back on in their own fight against terrorism—that is, democratizing states need not start from scratch, so to speak.¹⁰⁰

U.S. domestic laws and law enforcement institutions underwent a considerable transformation immediately after the 9/11 attacks, shifting concentration from prosecution to prevention.¹⁰¹ U.S. approaches ranged from enacting new laws to setting

¹⁰⁰ While acknowledging the fact that the United States and the UK serve as good examples of countries fighting terrorism, they have heavily invested huge resources in terms of manpower development. They have institutionalized a sophisticated set of structures, such as judiciary, intelligence services, and law enforcement agencies. On the contrary, Uganda has not reached such level as to match the standards of United States and UK, despite the fact that it shares almost the same beliefs with these countries with respect to the global war on terrorism.

¹⁰¹ Ashcroft, 131.

up an entirely new cabinet-level agency (the Department of Homeland Security), to attacking suspected terrorist hideouts in third-world countries, strengthening the allies, practicing diplomacy, and bolstering the country's security mechanisms.¹⁰² While detractors lament the establishment of the "national security state,"¹⁰³ the post-9/11 legal framework has been refined but, more importantly, largely upheld by the U.S. Supreme Court and Congress renewing the key statutes.

Similarly, the UK has, on several occasions, amended regular criminal laws to deal with terrorism-related cases whenever a terror incident occurred. This was because the UK had long engaged in running battles with members of the Irish Republican Army (IRA), which utilized terrorist tactics in their attacks.¹⁰⁴ As a result, the UK had to devise means of containing the IRA within the legal framework with these periodic adjustments to the law. For instance, the 1974 Birmingham incident, when bombs exploded in two pubs, killing 21 and injuring 168 others, forced the UK government to pass new legislation in the form of the Prevention of Terrorism Act.¹⁰⁵ This act defined terrorism "as the use of violence for political ends and any use of violence for the purpose of putting the public, or any section of the public in fear."¹⁰⁶ Specifically, this act came into force to define acts of the IRA as terrorist actions and to designate it as a terrorist organization. This act, however, did not stop such incidents. Instead, acts of terror increased, which compelled the government to keep amending the law until finally the Prevention of Terrorism Act was replaced by the Terrorism Act of 2000.

Indeed, the situation began to change after the 9/11 attacks, in which 67 British citizens lost their lives, along with more than 3,000 Americans. In addition, after 9/11, the UK experienced a series of terrorist attacks and attempted attacks, most notably the suicide bombings of July 7, 2005, that targeted London's public transit system. In the

¹⁰² Byman, *The Five Front War*, 3–4.

¹⁰³ Jeremy Neff, "Does (FISA+NSA)," "Does (FISA+NSA) - AUMF-Hamdi = Illegal Domestic Spying?" *University of Cincinnati Law Review* 75, no. 2 (2006): 901.

¹⁰⁴ Brendan O'Brien, *The Long War: The IRA and Sinn Féin* (New York: Syracuse University Press, 1999), 216.

¹⁰⁵ Hewitt, *The British War on Terror*, 19.

¹⁰⁶ *Ibid.*

aftermath, the UK shifted from ad hoc laws to a program of overarching, considered counter-terrorism laws that, according to Kubosova, were “some of the toughest anti-terrorism laws in the region.”¹⁰⁷ The transformation of Britain’s legal framework has also developed within the UK’s democratic procedures and traditions, which at least suggest that far-reaching counter-terror measures are not necessarily antithetical to democracy.

From a policy point of view, 9/11 forced the international community, led by the United States and the United Kingdom, to invest resources and manpower in the campaign against terrorism as well as in the promotion of democracy in many parts of the world. In this campaign, many democratizing states, including Uganda, have benefited from U.S. and UK aid, ranging from economic assistance, political and military financial aid, military training, and capacity building. In turn, the same states have reciprocated by supporting and promoting U.S. and UK policies in the war against global terrorism—more especially in the promotion of the rule of law, which is one of the most essential factors for the liberal democracies.

A. ANTI-TERRORISM LEGISLATION IN THE UNITED STATES AFTER 9/11

Following the 9/11 attacks, the United States developed a legal system to defend homeland security purposely to deny Al-Qaeda and its associates another chance to attack the country. The main instruments included Authorization for the Use of Military Force and the USA Patriot Act. Critics of these laws—which may or may not invest sweeping new powers in fewer federal hands, or which may or may not remove much counterterrorism activity from public review and oversight, or which may or may not blur the civil-military boundary beyond all democratic tolerances—decried the pressure that this framework put on American civil liberties. However, defenders of such laws argue that civil liberties may not be used as the alibi of terrorists working to destabilize the country.

This argument is reflected in President Bush’s address to a Joint Session of Congress on September 20, 2001: “We will direct every resource at our command—

¹⁰⁷ Beckman, *Comparative Legal Approaches*, *Comparative Legal Approaches*, 51.

every means of diplomacy, every tool of intelligence, every tool of law enforcement, every financial influence, and every weapon of war—to the destruction of and to the defeat of the global terrorist network.”¹⁰⁸ This statement contained carefully selected words that demonstrated the U.S. determination to fight the problem *and* its commitment to democratic principles. Arguably, this balance has held up. In the ten-plus years that have followed, most the laws enacted in the frantic period after 9/11 have more or less remained intact through the process of democratic review and revision.

1. Authorization for Use of Military Force

One of the key U.S. approaches is direct military intervention: invading countries where terrorists established their bases and rogue states that sponsor terrorism activities.¹⁰⁹ Such military intervention is provided for under the AUMF, a Joint Resolution passed by Congress on September 20, 2001.¹¹⁰ The AUMF emphasizes the need to maintain national security, to address external threats to the United States (ideally while they are still external), and to deter and prevent acts of international terrorism. To conduct such activities, the president is authorized to use his inherent constitutional authority to collect intelligence necessary for the conduct of foreign and military campaigns.¹¹¹

This mandate is supported by the president’s constitutional authority to direct National Security Agency (NSA) activities, which are of vital importance in the interception of communications to or from the United States of persons with links to Al-Qaeda or related terrorist organizations that have repeatedly vowed to attack the United States. In line with this argument, the NSA activities have all along been recognized by Congress as the fundamental method for conducting wartime surveillance, which

¹⁰⁸ U.S. Department of Justice, “*Legal Authorities Supporting the Activities of the National Security Agency Described by the President* (White Paper),” Washington, DC: U.S. Department of Justice, January 19, 2006.

¹⁰⁹ Byman, *The Five Front War*, 129.

¹¹⁰ U.S. Department of Justice, 1.

¹¹¹ U.S. Department of Justice, 7.

includes warrantless electronic surveillance against the declared enemy.¹¹² Specifically, the AUMF has justified and undergirded the U.S. military interventions in Iraq, Afghanistan, and Somalia, as the United States has spearheaded the war against terrorism especially against Al-Qaeda, the Taliban, and other terrorist groups associated with Al-Qaeda, like Al-Shabaab.

Under this resolution, the president was given the authority to use “all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized or aided the attacks of September 11th.”¹¹³ In the first instance, “all necessary and appropriate force” was and is assumed to include military intervention against the members of Al-Qaeda and the Taliban who had been linked to the 9/11 attacks.¹¹⁴ The sweeping language of the authorization, however, marks a departure from previous authorizations that limited the powers of the president to declare war.¹¹⁵ Detractors of the Bush Administration and the AUMF have responded with vehemence to the wide-open language of the authorization; operational practice has naturally constrained the United States’ grasp, if not its reach.¹¹⁶

Although the AUMF and the subsequent military interventions in Iraq and Afghanistan have registered such successes as the death of Osama Bin Laden, regime change in Afghanistan, and the forced entropy of Al-Qaeda into regional/transnational groups like Al-Qaeda in the Islamic Maghreb (AQIM) and Al-Qaeda in Arabian Peninsula (AQAP), among others, terror remains a threat to the people of America as evidenced by the Boston Marathon bombings. Internationally, American interests remain threatened—for one broad example, there is the declaration of Al-Qaeda leaders arguing that all Muslims kill U.S. citizens and military personnel wherever they are in the world. The attack on the U.S embassy in Benghazi, Libya, on September 11, 2012—a day when

¹¹² U.S. Department of Justice, 11.

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ William P. Rogers, “Congress, the President, and the War Powers,” *California Law Review* 59, no. 5 (September, 1971): 1194–1214.

¹¹⁶ Richard A. Posner, *Not a Suicide Pact: The Constitution in a Time of National Emergency* (New York: Oxford University Press, 2006), 132.

the U.S commemorates 9/11—killed the U.S ambassador to Libya and three other U.S nationals.¹¹⁷ This incident and other ones that took place in Turkey’s Istanbul in 2013, targeting American missions, is a clear testimony that terrorists pose a serious threat to American interests anywhere in the world. With such a threat, some questions need to be addressed: Was the authorization open-ended to cover all areas that the U.S has been engaged in or where its interests are threatened? Can the recent threats posed by the Islamic State in Iraq and Syria be resolved through the use of AUMF?

Military intervention has been faulted because of the controversies associated with it. For instance, it asserted unnecessary inherent executive war powers, which the White House has claimed are unlimited in the exercise of the president’s duties as commander-in-chief and as the protector of the national security.¹¹⁸ This issue is evidenced in the way the Bush administration took a decision to invade Iraq when there was no incriminating evidence linking it with terrorism activities, let alone the pretext of the weapons of mass destruction. At the international level, military intervention has also been associated with severe abuses in the form of torture and execution. Prisoners of war in detention are exposed to all forms of torture on the pretext of extracting information from them. The recent images portrayed by the media exposed all kinds of torture and abuses that American soldiers have been inflicting on the terror suspects.¹¹⁹ This kind of treatment of prisoners of war in Afghanistan and Iraq raises serious concerns among civil libertarians who wonder whether the American forces that were sent to restore democracy and freedom are doing the right thing in the name of America and its values.

Similarly, the use of military drones, despite its benefits in collecting intelligence information, has been faulted for unintended consequences in countries like Pakistan and Yemen. This, coupled with targeting of remote areas, further alienates the United States from a local population that has no contacts with the terror groups. Nonetheless, drones have been beneficial to counterterrorism operations. More than 3,000 Al-Qaeda suspects

¹¹⁷ CNN, “Benghazi U.S Mission Attack Fast Facts.” December 2, 2014, <http://www.cnn.com/2013/09/10/world/benghazi-consulate-attack-fast-facts/>.

¹¹⁸ Neff, “Does (FISA+NSA),” 907.

¹¹⁹ Philip Zimbardo, *The Lucifer Effect: Understanding How Good People Turn Evil* (New York: Random House 2007), 332.

have been killed in counterterrorist strikes through the targeted killings with the use of drones.¹²⁰

More often than not, drones have been deployed in Pakistan, Yemen, or Somalia, targeting high-profile terrorists, like in the case of Anwar al-Awlaki, one of Al-Qaeda's senior leaders who was operating in Yemen; and Saleh Ali Saleh Nabhan, a suspect in the attacks on two American embassies in Nairobi, Kenya, who was hiding in Somalia in 2009.¹²¹ Second, the issue of minimizing American casualties in war is another reason why drones have been used in countries where America does not expect maximum cooperation and is likely to lose a substantial number of its soldiers. In the same vein, Bradley Jay Strawser argues that, in order to protect the troops from unnecessary casualties, what he termed the "principle of unnecessary risk," the United States is morally and ethically justified in the use of unmanned aerial vehicles (UAVs).¹²² This is because the UAVs minimize the number of casualties and saves the lives of American soldiers without impairing the overall aims of the mission. Third, the use of drones is supported by AUMF statute, and the president is able, at will, to use all the necessary and appropriate force against any person who intends to attack the United States; therefore, the use of drones in the war against high value targets is justifiable within the law.

Nevertheless, within the public realm, targeted killings are not the way of promoting democracy, especially in cases where drones land on the wrong targets. Civil libertarians argue that drone strikes have led to extrajudicial killings of people, whose identities are unknown, let alone to denying such people a legal due process. This kind of action puts the United States on the spot insofar as the protections of human rights are concerned. Besides, the kinds of attacks that drones are used for are similar to those of terrorists.

¹²⁰ Scott Shane, "Targeted Killing Comes to Define War on Terror," New York Times, April 7, 2013.

¹²¹ Mark Mazzetti and Eric Schmitt, "U.S. Expands Drone War into Somalia," New York Times, August 31, 2011.

¹²² Bradley Jay Strawser, *Killing by Remote Control* (Oxford: University Press, 2013), 17.

2. The Patriot Act

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, commonly referred to as the USA Patriot Act, was enacted by Congress in 2001.¹²³ The act aims to deter and punish terrorist acts in the United States. It was enacted to enhance law enforcement investigatory tools, and for other purposes. The Patriot Act, passed almost immediately after the 9/11 attacks, grants the government and especially the law enforcement agencies extra powers of investigation, ideally leading to the apprehension of many criminals that would otherwise not be in the system. Critics claim that it makes terrorists out of ordinary citizens exercising their constitutional rights and vests the government with far more unchecked power than it should have.

To begin with, the law provides for what is called “sneak and peek” warrants where government law enforcement officers can search a person’s property without any warrant or notification.¹²⁴ It also provides for information sharing between government agencies and permits wiretapping of every single form of communication, as well as the indefinite detention of any immigrant or non-citizen.¹²⁵ Coupled with this measure is the inclusion of Internet surveillance laws, which helped the law enforcement agency to monitor the activities of terrorist groups through electronic surveillance.¹²⁶

Notwithstanding the advantages of such information sharing, unrestricted information sharing may lead to unconstitutional behaviors by collecting information on innocent citizens in a limitless form. For example, the U.S. Fourth Amendment provides protection of citizens against government power as further enshrined in the Bill of Rights. Solove observes that the U.S Constitution ensures that the “government cannot gather information about a person without putting proper oversight and limitation.”¹²⁷

¹²³ Howard Ball, *The USA Patriot Act: A Reference Handbook* (Santa Barbara, California, 2004), 33.

¹²⁴ Nacos, “*Terrorism and Counterterrorism*,” 215.

¹²⁵ Beckman, *Comparative Legal Approaches*, 27.

¹²⁶ Orin S. Kerr, “Internet Surveillance Law after the USA Patriot Act: The Big Brother That Isn’t.” *Northwestern University Law Review*, no. 97, 2003, 34.

¹²⁷ Daniel Solove, *Nothing to Hide: The False Tradeoff between Privacy and Security* (New Haven: Yale University Press, 2011), 93.

Accordingly, it requires any government official to obtain a court order with convincing or reasonable grounds before any form of surveillance or search is conducted against any individual. This is a kind of protection the Fourth Amendment is expected to offer to an individual when the government is trying to gather information from any individual. However, with the advent of technology, such protection is limited because in some instances, government can collect any information and carry out any form of surveillance on an individual the way it deems it necessary without going through legal procedures, in part because of the way the technology in the communication systems is designed.

The other key component of the Act allows investigators to collect foreign intelligence with fewer restrictions as was in the Foreign Intelligence Surveillance Act (FISA) and the Intelligence Authorization Act for Fiscal Year 1999, H.R. 3694, especially the non-specification of the telephone line or email to wiretap and the authorizing court. Thus, the tap attaches more to the targeted person than his or her specific devices; even if the suspect discards the gadget, he or she will still be tracked.

However, this kind of electronic surveillance has been criticized for the infringement on the civil liberties. The American Civil Liberties Union (ACLU) has openly labelled the law and legislation that strips the American citizens of their privacy and freedoms¹²⁸ as enshrined in the U.S. Constitution and, for that matter, in the Universal Declaration of Human Rights. There have been calls to have the act reconsidered, especially Section 215, which empowers enforcement officers to obtain any kind of information they regard as connected with terrorism, irrespective of anyone in its possession.¹²⁹ However, the law only provides amendments to several provisions, and the focus on only the controversial sections negates the overall purpose of the act. The domestic spying program that allows enforcement officers to conduct warrantless domestic spying is in total contravention of Foreign Intelligence Surveillance Court

¹²⁸ American Civil Liberties Union, *Reclaiming Patriotism: A Call to Consider the Patriot Act* (New York: ACLU, March 2009), http://www.aclu.org/files/pdfs/safefree/patriot_report_20090310.pdf.

¹²⁹ Ibid.

(FISC) because AUMF changed the rules regarding domestic electronic spying in response to the ongoing war on terror.¹³⁰

Using the same law, government agents are given the opportunity to access individual records at such places as libraries, banks, bookstores, Internet providers, and insurance companies without going to FISA court or having any form of oversight.¹³¹ The only concern is how such information is stored and used because in some cases, it can land in the wrong hands and be used against an individual in prosecution, which puts American citizens in considerable doubt against government actions.¹³² In addition, the rate at which the government is conducting electronic surveillance using the modern electronic technology is threatening most American citizens fearing that their communications have been tapped into and listened to. This kind of surveillance is not only invasive of someone's privacy, but it also limits one's freedom of communication.¹³³ A reason why the ACLU has decided to engage the government in court battles is get a better interpretation that adheres to the democratic principles enshrined in the U.S. Constitution.

In the final analysis, the AUMF reiterated the presidential constitutional powers outlined in the Patriot Act that justify the NSA program, which included the authority to conduct warrantless surveillance as a way of correcting intelligence for the purposes of waging war against terrorism. Based on these laws, U.S citizens have been subjected to domestic spying, which they consider a violation of their constitutional rights and civil liberties. The ACLU claims that the provisions of the AUMF are overly broad and are in conflict with FISA of 1978.

Where the AUMF empowers the president to use force for the protection of the U.S citizens, the Patriot Act enforces the existing laws that deal with the realities of terrorism, especially on issues related to methods of information correction. These laws, however, were not passed with the intentions of violating rights and freedoms of the

¹³⁰ Neff, "Does (FISA+NSA)," 891.

¹³¹ Posner, *Not a Suicide Pact*, 134.

¹³² Solove, *Nothing to Hide*, 25.

¹³³ Posner, *Not a Suicide Pact*, 136.

American citizens. Problems arise with respect to the legal technicalities on how these laws work together, especially with complications that are revealed in *Hamdi v. Rumsfeld*. In this case, issues of war powers and domestic wiretapping in relation to citizens and combatants became contentious in determining whether they are applicable to U.S citizens living in the United States or to the U.S citizens in the theater of war outside the United States.¹³⁴

B. THE ANTI-TERRORISM LEGISLATION IN THE UNITED KINGDOM

The UK has had a long history of dealing with terrorism, even before the 9/11 attacks that significantly catapulted terrorism to the global map, with the initial response to terrorism being through conventional criminal law. The UK forms of terrorism carry different dimensions ranging from political, to religious, to ethnic, but more specifically, it lies in the conflict with the Irish nationalism.¹³⁵ Therefore, the legal measures were purposely to respond to Irish Republicans who had waged a terrorist's campaign against the United Kingdom. The British experience of dealing with terrorism was, in this case, limited mainly to the IRA, which had a big political bearing and was highly domesticated. As a result, the British government directed its efforts in trying to resolve IRA problems from a political perspective, even though in some other instances the legal approach would be used.

However, when the IRA increased its attacks and the consequent failure of the British security apparatus to contain the situation, the British government was forced to pass a series of laws to tackle the problems of the IRA, laws that were primarily focused on terrorism cases. These laws were designed purposely to deal with terrorism that was being perpetuated by the IRA, limiting the UK to put in place a major overarching approach to counter-terrorism. However, when the problem of IRA terrorism was at its decline, the threat of radical Islamic-based terrorism emerged on the world scene on a very large scale, which necessitated the UK to give a serious attention to such problems.

¹³⁴ Neff, "Does (FISA+NSA)," 910.

¹³⁵ Morag, 71.

Several other acts have been passed, namely the Anti-Terrorism Crime and Security Act of 2001, the Prevention of Terrorism Act of 2005, the Terrorism Act of 2006, and the Counter Terrorism Act of 2008. For purposes of this research, I focus on the Anti- Terrorism Act of 2000 and Anti-Terrorism Crime and Security Act (ATCSA), which are taken as major legal laws in the fight against terrorism in the UK.

1. UK Anti-Terrorism Act of 2000

With the advent of the international/transnational terrorism on the scene, the UK was forced to develop laws so as to harmonize with the United States and the rest of the world in the war against terror. The significant terror attacks in terms of injuries and death happened during an attack on London's transport system on July 7, 2005,¹³⁶ leading to the development of a new strategy for managing counterterrorism, commonly known as CONTEST.¹³⁷ As a result, the UK registered several arrests and prosecutions.¹³⁸ Terrorism laws in the UK have long been seen as a reaction to temporary and fragmented incidences forcing the country to keep shifting the laws on terrorism.

However, since 2000, efforts to have a more unified approach have been sought with the enactment of the Anti-Terrorism Act of 2000.¹³⁹ This act, to a larger extent, replaced the previously used laws against terrorism orchestrated by IRA in the Northern Ireland. It helped to have uniform laws so as to bring together all the laws that were to be used in the fight against terrorism in the whole country since the country had started experiencing different forms of terrorism. Furthermore, the enactment of the Anti-Terrorism Act of 2000 meant that all bad laws that applied to the IRA were removed so as to comply with the European Convention on Human Rights (ECHR). The compliance with the ECHR meant that holding terror suspects for longer periods without charge and

¹³⁶ Beckman, *Comparative Legal Approaches*, 76.

¹³⁷ Francis Richards, "The Development of the UK Intelligence Community after 9/11," in *International Terrorism Post-9/11 Comparative Dynamics and Responses* (New York: Routledge, 2010), 118.

¹³⁸ The UK CT strategy provides detailed statistics on arrests and prosecutions of suspected terrorists and terror threats. See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97995/strategy-contest.pdf.

¹³⁹ Beckman, *Comparative Legal Approaches*, 59.

police arresting a person suspected of being a terrorist without a warrant could no longer be entertained because such actions would be in contravention of the European Convention on Human Rights. However, some the laws that were removed somehow resurfaced after the events of 9/11.

Inasmuch as the act removed some of the laws with the aim of complying with the requirement of human rights laws, it did not significantly take away the existing law. In fact, the act widened the law in many ways, including by broadening the definition of terrorism whereby the offenses related to terrorism affect not only the perpetrators but also anyone who assists in committing the crime. In addition, the act put in place provisions relating to investigation of terrorist organizations, and any individual associated with that organization.¹⁴⁰ Other than broadening the definition, the act increased the powers of police by both statute and common law in terms of carrying out surveillance, search, and seizure. Thus, it is worth noting that the Anti-Terrorism Act of 2000 brought changes in what was lacking between balancing human rights and fighting terrorism.

2. The Anti-Terrorism Crime and Security Act of 2001

The ATCSA was the UK legislative response enacted immediately after the events of 9/11. It was also done as a requirement to comply with the UN Security Council Resolution 1373 (2001) on forfeiture and seizure of property of terrorists. Alongside the UN Security Resolution, the ATCSA was also enacted to ensure that UK laws are consistent with EU regulations concerning police and judicial cooperation in handling terrorism-related offenses.¹⁴¹ The law adds to the consolidated Anti-Terrorism Act of 2000 by introducing clauses on dangerous substances and aviation security and also filling the gaps and loopholes that were not attended to in the Anti-Terrorism Act of 2000.¹⁴² Unlike the Anti-Terrorism Act of 2000, the ATCSA gives wider powers to the police, customs, and immigration, especially for cash-related seizures, whose definition is

¹⁴⁰ Beckman, *Comparative Legal Approaches*, 60.

¹⁴¹ Beckman, *Comparative Legal Approaches*, 69.

¹⁴² Hewitt, *The British War on Terror*, 37.

also expanded.¹⁴³ Curtailing terrorism financing has been identified as a key instrument in the quest for combating terrorism.

The UK, through the ATCSA, introduced forfeiture and seizure of cash and property where freezing of such properties and cash could easily be carried out, including outside the UK, both for individuals and organizations. The biggest benefit has been the general nature of Sections 1–3 and the long title by not specifying that the act targets terrorism-related actions on United Kingdom’s economy, implying that it can be applied in non-terrorist situations.

The act further provides for the disclosure of information for the purposes of investigation and criminal proceedings, including the confidential information held by public bodies, such as banks, insurance firms, and government bodies. This has been seen as a violation of the right to privacy. The ATCSA raised a number of key human rights concerns, the main one of which was the detention of suspects for a non-mandatory period without trial.¹⁴⁴ Because of this kind of internment, some have argued that this law is “the most draconian law legislation Parliament has passed in peacetime in over a century.”¹⁴⁵ By application, the Secretary of State could certify any non-British citizen as a terrorist and be detained indefinitely without sufficient admissible evidence for prosecution.¹⁴⁶

Relatedly, even the special advocates for such detainees, on top of being vetted first, couldn’t share with their clients the secret evidence the government relied on in appeals by foreign nationals detained indefinitely under anti-terrorism powers. Because of the inherent human rights challenges, this was to be later enhanced by use of the derogatory clauses that led to a declaration of a state of emergency so as to fit into the

¹⁴³ Paragraph 1 of Schedule 1 defines cash as coins and notes in any currency, postal orders, travelers’ cheques, bankers’ drafts, and such other kinds of monetary instruments as the Secretary of State may specify by order.

¹⁴⁴ Part 4 of the UK ATCTS Act.

¹⁴⁵ David Williams, “The United Kingdom’s Response to International Terrorism.” *Ind. Int’l & Comp. L. Rev.* 13, no. 3 (2003) <https://journals.iupui.edu/index.php/iiclr/article/viewFile/17774/17957>.

¹⁴⁶ Michael Ignatieff, *The Lesser Evil: Political Ethics in an Age of Terror* (Oxford, Princeton University Press, 2004), 50.

ECHR definition.¹⁴⁷ The special rules of evidence that permitted exclusion of the detainees and their legal representatives from proceedings were against the rules of a fair hearing.

Such human rights violations attracted several cases against the processes and the law; hence, in 2004, the House of Lords declared the powers of detention were incompatible with the UK's obligations under the ECHR.¹⁴⁸ The Appellate House of Lords pronouncements could be summarized as follows: No detention pending deportation can last for more than seven days, let alone three years; deportation of terror suspects is not a solution but a continued transmission of terrorism; terrorism is not a preserve of foreign nationals, as about 30 percent of British citizens had been arrested; the law is unjustifiably discriminatory; uniform measures should be adopted irrespective of nationality; and there is no observable state of emergency threatening the nation.

Similar views resonated with the 2002 ATCSA reviewing committee, which recommended that a review of Part 4 was not sustainable way of addressing the problem of terrorist suspects in the UK. It applied only to foreign nationals, and although the legislation is expressed in terms of international terrorism, the scope of the derogation from the ECHR means that it can be applied only to individuals with links to groups linked to Al-Qaeda. It should therefore be replaced or expanded.¹⁴⁹

The ATCSA further infringes on personal liberties through forcefully acquiring fingerprints and other identifying features from individuals so as to ascertain identity, which is another form of individual rights violations, the access and retention of data for purposes of national security in the hands of telephone and Internet providers. The powers could be misused, leading to misuse of the information collected. However, the

¹⁴⁷ Article 1 of the ECHR defines the Convention as an international treaty by which signatory states oblige themselves to secure certain rights to persons within their jurisdiction.

¹⁴⁸ "A (FC) and Others (FC) (Appellants) v. Secretary of State for the Home Department (Respondent) (2004); A and Others (Appellants) (FC) and Others v. Secretary of State for the Home Department (Respondent) (Conjoined Appeals), [2005] UKHL 71, United Kingdom: House of Lords (Judicial Committee), 8 December 2005, available at: <http://www.refworld.org/docid/439957d94.html> [accessed 19 February 2015].

¹⁴⁹ Privy Review Committee. "Anti-Terrorism, Crime and Security Act 2001 Review: Report," presented to Parliament pursuant to Section 122(5) of the Anti-terrorism, Crime and Security Act 20, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251096/100.pdf.

extension of operational areas to cover British Transport, railways lines, and government installations for the purposes of arresting any offenders, or seizing or preserving evidence relating to crime,¹⁵⁰ is a positive move.

Thus, it goes without saying that both of the UK Anti-Terrorism Acts have significantly revolutionized anti-terrorism laws in their operation. In effect, the acts expanded terrorism laws, which were initially limited to domestic terrorism based on the threats posed by the IRA. While dealing with the problems of IRA, the UK did not put issues of human rights and other concerns of civil liberties into consideration. The government was concerned with defeating the IRA without being mindful of civil liberties. However, with the introduction of these acts, the UK was able to remove the obnoxious laws and replace them with laws that were accommodative and consistent with the international requirements in handling terrorism-related cases. More importantly, these acts changed the legal language by empowering the law enforcement that led to the increased police investigative capacity, which helped judicially to prosecute terrorism related cases successfully.

C. ALLIES AND THE INTERNATIONAL CONTEXT

The war on terrorism requires concerted efforts, and at the same time it is not possible for the U.S. to have troops placed in every area suspected of harboring terrorists. Working with the allies and the support from the international community may solve some of the challenges, especially when it comes to intelligence collection and deployment of troops. Allies are better placed when it comes to fighting proxy wars because, in the first place, they use their own structures established, and at the same time they operate in a familiar and friendly environment, which is not the case with foreign troops. This option, therefore, has prompted the U.S. to establish strong relationships with countries that have expressed interests in the fight against terrorism.

¹⁵⁰ Part 10 of the ACTS Act.

1. Strengthening the Allies

The U.S. approach in the fight against terrorism has been reinforced by strengthening its allies. This approach is supported by the UN Security Council to combat international terrorism, particularly in its Resolution 1373. Under this resolution, member states are encouraged to cooperate in combating terrorism. In addition, the United States has developed programs in the Trans-Saharan region, East African region, Maghreb region, and South and Central Asia, backed by the same resolution.

Various programs and initiatives have focused on capacity building, technical assistance, detection, and denying terrorist safe havens from where they recruit, plan, and organize their activities. Through this approach, America has provided technical training to law enforcement agencies in investigations, development of counter-terrorism systems, and institutional responsiveness. In addition, border security has been supported, especially in the systems that can identify terrorists. For example, through the Personal Identification Secure Comparison and Evaluation Systems (PISCES) at almost every entry or exit point, Ugandan immigration can apprehend watch-listed individuals. Institutions in the rule of law and criminal justice agencies, especially in transitional states, have also benefited from the production of documents for good practice.

2. NATO's Involvement in Combating Terrorism

The use of allies in the fight against terrorism does not stop at strengthening individual countries, but goes beyond to involve working with NATO member states that provide a shared platform for the promotion of freedom and security through political and military means. In line with this development, Article 5 of the North Atlantic Treaty stipulates that an attack on any NATO member state intimates that all member states are under attack.¹⁵¹ This is the very reason why NATO was in action within a short spell of time after 9/11 terrorist attacks in the United States. NATO's involvement was actually in the fulfillment of its legal obligation. The current war on terror in which the United States and the UK are involved is as a result of the direct terror threat two which NATO

¹⁵¹ NATO, "NATO Policy Guidelines on Counter-Terrorism," May 12 2012, http://www.nato.int/cps/en/natohq/official_texts_87905.htm?selectedLocale=en.

member states are exposed. In an effort to protect its member states, NATO invoked Article 5 in support of its allies for the first time.¹⁵² Subsequently, NATO has had direct involvement in countries that are suspected of harboring and providing safe havens to terrorists and their organizations. The military operations especially in Afghanistan and Iraq have been heavily supported by NATO forces contrary to the perception that the United States and the UK are dominating in the war against the Islamic countries, as indicated by Stephen Walt's study of U.S. policies.¹⁵³ Despite this concern, the overwhelming success against the Taliban government in Afghanistan was out of NATO's offensive action, which forced the Taliban and Al-Qaeda militants into disarray.

NATO's actions and approaches are based on the premise that the threat of terrorism is an international problem. Therefore, to deal with it, according to Florina Cristiana Matei, requires "collective political, economic and law enforcement measures, as well as military engagement."¹⁵⁴ This approach has been possible through strengthening cooperation with other members in the promotion of peace and security in countries where terrorism poses serious security threats. In this particular instance, NATO has been instrumental in striking and dismantling terrorist capabilities and their networks. The engagement in the fight against terrorism is one of NATO's cardinal missions, on top of other international obligations incidental to the safety of its members in times of crisis.

3. European Union Role in Combating Terrorism

The European Union is among the international bodies that are instrumental in the field of fighting international terrorism. Its efforts are embedded in the framework of the European security strategy, which is based on respect of human rights and international

¹⁵² Florina Cristiana Matei, "Combating Terrorism and Organized Crime: South Eastern Europe Collective Approaches," in *Bilten Slovenske Vojske*, ISSN1580-1993, UDK355.5(479.4)(055), 44.

¹⁵³ Stephen M. Walt, "Why They Hate Us (II): How Many Muslims Has the U.S Killed in the Past 30 Years?" *Foreign Policy*, November 30, 2009.

¹⁵⁴ Matei, "Combating Terrorism and Organized Crime," 44.

law.¹⁵⁵ Through the development of the “European Security and Defence Policy” (ESDP) and the introduction of EU justice and home affairs policies (JHA), the EU has been able to have an institutionalized framework through which various bodies have been formed to respond to the challenges presented by transnational terrorism. Prominent among these bodies is the intelligence team composed of the EU’s military staff who are mandated to correct and secure classified information from the intelligences agencies of member states. The importance of this team in the fight against terrorism has been the increased intelligence cooperation and exchange, which has enabled joint assessment.

Another body created by the EU is Europol. This agency is charged with the responsibility of enforcing offenses related to cross-border crimes. In addition, Europol has been instrumental in pursuing cases related to reported lost passports and other travel documents which are suspected to be in the wrong hands, and in implementing European arrest warrants.¹⁵⁶ Other than dealing with the law enforcement, Europol follows terrorism activities in regard to financing terrorism, radicalization within the EU member states, and recruitment networks. In this area, Europol has provided a lot of actionable information related to terrorist activities, which has helped in building useful databases on terrorist activities shared between EU member states.

In addition, through the EU initiatives, there has been practical improvement in areas that used to be vulnerable and favorable targets for terrorists. For instance, in the wake of heightened threats in aviation sector, the EU instituted advanced electronic security measures to protect aviation transport and borders. These measures have led to a drastic drop of terror incidents within aviation and in other means of transport. Coupled with these measures, EU member states made changes and improved travel documents to include advanced security features (bio-metrics) that make them difficult to forge,

¹⁵⁵ Graham Messervy-Whiting, “British Armed Forces and European Union Perspectives on Countering Terrorism,” in *International Terrorism Post-9/11 Comparative Dynamics and Responses* (New York: Routledge, 2010), 107.

¹⁵⁶ Jorg Monar, “The European Union’s Response to 11 September 2001: Bases for Action, Performance and Limits,”
<http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB4QFjAA&url=http%3A%2F%2Fwww.albany.edu%2F~rk289758%2FBCHS%2Fcol%2FJHA-TERRORISM-NEWARK.doc&ei=JsLVVPC7B86zogTS44G4CA&usg=AFQjCNERkwFRgxYXFB4PbLrkRPaniywc-A&bvm=bv.85464276,d.cGU>.

reducing the levels of forgeries in travel documents.¹⁵⁷ In this respect, the EU has demonstrated rigor in the support of fighting international terrorism.

4. Diplomacy

Diplomacy is an instrument used by governments to implement their foreign policy as defined by their respective governments under international law. Terrorism as a cross-border crime requires high-level diplomatic approaches and negotiations to achieve support from other states and to obtain public support. However, the United States has relied more on military power after the 9/11 events in the fight against terrorism. Later, U.S. leadership realized that military power cannot be achieved in some cases without diplomatic means.

Using its position at the UN Security Council, the United States has supported the efforts to fight terrorism. For example, under Security Council Resolution 1267, sanctions were placed on Al-Qaeda, obligating member states to freeze its assets and prohibit travel of its associates. Terrorism financing is one of the areas that the United States has prioritized with focus on establishing legal frameworks and regulatory systems. However, the use of military force has damaged the image of the United States, as reflected in the recent Gallup opinion poll¹⁵⁸ and the Zogby international poll.¹⁵⁹ Scholars have argued that Americans use coercive diplomacy by use of military power, in which force is used as a political diplomatic strategy.¹⁶⁰ The comprehensive legal framework of the United States has been the justification of its strategies.

¹⁵⁷ Messervy-Whiting, "British Armed Forces and European Union Perspectives," 109.

¹⁵⁸ The Poll Was Conducted in Muslim Countries. For details, see Gallup/USA Today, "Global Opposition to U.S. Drone Strikes Grows," July 14, 2014, <http://www.usatoday.com/story/news/world/2014/07/14/pew-global-drones-snowden-nsa/12628661>; and Zogby International, "The Ten Nations Impressions of America Poll," April 11, 2002; Pew Research Center, "America Admired, Yet Its New Vulnerability Seen as a Good Thing, Say Opinion Leaders," December 19, 2001; "Americans and Europeans Differ Widely on Foreign Policy Issues," April 20, 2002, www.people-press.org; and Richard Morin, "Islam and Democracy," Washington Post, April 28, 2002.

¹⁵⁹ It was conducted in ten countries.

¹⁶⁰ Tim Zimmerman, "The American Bombing of Libya: A Success for Coercive Diplomacy?: Survival: Global Politics and Strategy 29, no. 3 (1987): 195–215, <http://www.tandfonline.com/doi/pdf/10.1080/00396338708442356>.

D. CONCLUSION

The United States and the UK have in their strategies for counterterrorism a strong legal framework with the Patriot Act and the Anti-Crime and Security Act of 2001, respectively, among the most pronounced laws. These laws were put in place as a reaction to the 9/11 terror attacks. The two anti-terror laws have been heavily criticized for infringing on individual human rights, especially freedom of association, liberty, religion, and privacy. Despite the criticism, these strategies have had to endure; their applications have registered a tremendous success in the fight against terrorism. For instance, some of the rogue states suspected of sponsoring terrorist organizations have been dealt with, and their leaders have been dethroned through the use of military force. One other success has included the capture and killing of Osama Bin Laden, the Al-Qaeda leader who claimed responsibility for 9/11 attacks. In addition, the U.S. government and its allies have steadily gained the upper hand over terrorists to the extent that it has not been possible for Al-Qaeda to carry out any other attack of 9/11 magnitude for the last ten years.

Nevertheless, the power vacuum left behind in states where the leaders have been dethroned seems to be creating a new form of terrorism, a situation that is currently being witnessed in Iraq. On the basis of this challenge, it becomes difficult to imagine a solution that does not include military intervention. However, the challenges notwithstanding, these two countries are lessons learned for Uganda's efforts as an emerging democracy to counter terrorism.

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IV. COUNTERTERRORISM AND THE LIBERTY–SECURITY TRADEOFF IN UGANDA: QUO VADIS?

Fighting terrorism in a democratic society poses distinct challenges, particularly when policies embraced by governments are interpreted to be undemocratic in the way they are executed. The main claim of critics is that in the process of implementing these policies, governments unintentionally infringe on people's rights and freedoms because the immediacy and urgency of security considerations preempt the niceties of civil liberties. This claim, according to English, is overstated by many scholars who subscribe to the view that governments institute policies in a hasty manner without due consideration of the root causes of terrorism.¹⁶¹ Either way, both democratic and democratizing states have the obligation to protect their citizens from the heinous acts of terrorists, and the best way to do so is to put policies in place that support and are supported by the democratic values of the society.

This chapter assesses Uganda's current anti-terrorism policies and their effects on democratization's requirements of freedom, transparency, human rights and liberties. It further offers recommendations for Uganda, based on the lessons learned from United States and UK experiences, which may help policy makers strike a better security/transparency balance.

A. POLICY ANALYSIS—AND EFFECTS

Democracy, by its definition, allows citizens to act freely without being unduly restricted by government actions (policies). It promotes the rule of law and encourages institutions to operate without government interventions. Additionally, democratization of a given society is also influenced by various factors, including the involvement of civil society in shaping the political landscape; political society; rule of law; and bureaucracy.¹⁶² Civil society, which includes groups ranging from non-government organizations (NGOs) to students' organizations, to trade unions, help in monitoring

¹⁶¹ English, *Terrorism*, 118.

¹⁶² Linz and Stepan, 7.

government programs especially in areas of accountability, transparency, human rights issues, conflict resolution, and the rehabilitation of war victims.

However, such relationships may not always function as described especially in a country whose democracy is perpetually disturbed by terrorist activities. Such a situation creates the need for the government to put policies in place to mitigate acts of terrorism, which in their way of functioning restricts the freedom necessary for democratic process. As way of striking a balance between security and civil liberties, these policies need to be seen functioning within the legal framework without comprising the country's security and civil liberties. Consequently, the government of Uganda in its effort to combat terrorism, while promoting and maintaining the rule of law, carried out several legal reforms and policies geared towards strengthening the existing laws and institutions in the fight against terrorism. Prominent among these changes was the enactment of the Anti-Terrorism Act 2002, the Anti-Money Laundering Act, the Interceptions of Communications Act, and other legal reforms that included border controls and police reforms.

1. Balancing Transparency/Liberty/HR and Security: The Legal Framework

Under this legal framework, the Anti-Terrorism Act has been viewed to be granting overwhelming powers to enforcement officers, which the public sees as a violation of civil liberties, eroding constitutionally mandated checks and balances.¹⁶³ This contradiction is a major challenge for democratizing states like Uganda because balancing counterterrorism legislation with constitutionally guaranteed human rights is often problematic.¹⁶⁴

This tension is best illustrated by a case in which terrorism charges were leveled against 29 persons who allegedly burnt down a police station in a Kampala suburb during a riot in September 2009.¹⁶⁵ This riot, however, did not have any connection with

¹⁶³ Brigitte L. Nacos, "Terrorism and Counterterrorism," 212.

¹⁶⁴ Paul Wilkinson, *Terrorism versus Democracy*, 117.

¹⁶⁵ Andrew Bagala, "Uganda: Riot Suspects Face Terrorism Charges," Daily Monitor September 22, 2009.

terrorism; the population was protesting the central government's prevention of a cultural leader from visiting one of the neighboring counties. Bringing terrorism charges against people who demonstrate also raises human rights concerns.

Some actions backed by the Act require a precise legal definition to avoid this kind of contradiction as in Article 15 of the International Covenant on Civil and Political Rights (ICCPR).¹⁶⁶ In as much as this contradiction exists within the law, still the Ugandan judicial system accords a fair trial to suspects as required by the constitution, leave alone the demands of human rights activists who act as potential advocates for civil liberties. For instance, though the initial charge of the mentioned case may have been inappropriate, still suspects were accorded a fair trial leaving the law to determine whether the charges were correctly applied. Chapter 4, Article 28 of the Ugandan constitution grants every citizen a right to a fair hearing.¹⁶⁷

In addition, issues of constitutional rights have been raised by foreign terrorist suspects who are to be extradited from one jurisdiction to another.¹⁶⁸ In Uganda, the suspected terrorists involved in the twin bomb explosions on July 11, 2010, challenged their extradition from Kenya and Tanzania. The suspects argued that their extradition to Uganda was unconstitutional because proper procedures that would guarantee their rights as protected by the constitutions of their respective countries were not followed.¹⁶⁹ However, the court ruled that their trial in Uganda could stand because there was no extradition. It held that “the alleged illegalities cannot be attributed to Uganda. This was because the respective Police [of Kenya and Tanzania] voluntarily surrendered the petitioners. There is no demonstration of proof of conspiracy in the extradition.”¹⁷⁰ Therefore, their trial could still stand, as Kenya was voluntarily cooperating and not compelled by any extradition treaties. However, there still remains no act to streamline

¹⁶⁶ International Covenant on Civil and Political Rights, adopted by the General Assembly of the United Nations, 999-I-14668 (December 1966).

¹⁶⁷ The Constitution of the Republic of Uganda.

¹⁶⁸ Morag, *Comparative Homeland Security Global Lessons*, 63.

¹⁶⁹ Hillary Nsamu, “Terror Suspects Challenge Extradition to Uganda,” *New Vision Newspaper*, November 18, 2011.

¹⁷⁰ Anthony Wesaka, “Kampala Twin Bombers Trial Halted,” *The Daily Monitor*, November 18, 2011.

mutual legal assistance between Uganda and other countries. This gap poses challenges to handling of requests for assistance for evidence from foreign partners.

The Anti-Money Laundering Act raises its own concerns vis-à-vis democratization in Uganda, namely that the law breaches the agreement of client confidentiality, which requires that banks must keep their clients' transactions in secrecy. By allowing third parties to get access to anyone's transactions, the Act greatly undermines the doctrine of fair hearing and the rule of law. Despite this weakness, the financial regulations are managed within the legal framework which in itself has implications on the development of democratization making it a matter of rule of law as opposed to draconian means which are not backed by the principles of democracy. For instance, rights to privacy outlined in Chapter 4 Article 27 section (2) of the Ugandan constitution, which states that "no person shall be subjected to interference with the privacy of that person's home, correspondence, communication or other property."¹⁷¹

Specifically with respect to financial intervention, the Act presents some challenges with regard to the informal economy and the democratization process. In the first place, the informal sector provides employment to a big section of unemployed population that is currently engaged in economic and income generating activities including mobile money services. In the effort to regulate such activities (informal sector), the government must ensure that it does not deny its population the source of income. Regulating these activities within the legal framework in itself, promotes democracy because the population will not be denied the ability to improve its standard of living. On the other hand, interfering with peoples' sources of income may jeopardize the process of democratization because it acts as a disincentive that encourages the population to engage in terrorism activities.

In addition, the fight against terrorism has been punctuated with human rights questions that range from curtailing of civil liberties to killing of innocent civilians. The interception of Communications Act has also equally affected the democratization process especially in the manner in which it is applied. It has been seen as a means of

¹⁷¹ Chapter 4 Art 27 Sec 2 of Ugandan Constitution.

curtailing individual rights of freedom of expression. The Interception of Communications Act raises a number of human rights issues for a democracy.¹⁷² It has been seen as a means of curtailing individual rights freedom of expression and privacy, which contravenes the Constitution.¹⁷³ In the fight against organized crime and terrorism, modern police and intelligence agencies use information and surveillance technology, including phone tapping. This act potentially affects numerous innocent citizens who have nothing to do terrorism cases. It also constitutes far-reaching interference with the right to privacy and data protection. Ample examples of this issue appear in the media reports and complaints at the Uganda Human Rights Commission (UHRC) relating to interception of communication and surveillance.

The same issue was raised by General David Tinyefuza, a high-profile government official, who complained about phone tapping after his failed bid to resign from the army in 1997.¹⁷⁴ In addition, members of Parliament (MPs) from the opposition parties were up in arms with the government for allegedly tapping their mobile phone conversations without real security motive to do so. This incident came after the Parliament was informed on September 8, 2003, that intelligence intercepted a conversation between an opposition MP and a rebel commander of the LRA.¹⁷⁵ Coupled with this complaint, media reports indicated that the opposition politicians were accusing

¹⁷² Posner, *Not a Suicide Pact*, 144.

¹⁷³ Constitution of Republic of Uganda, Article 27(2) of the 1995 states that no person shall be subjected to interference within the privacy of their homes, correspondence, communication or other property.

¹⁷⁴ In 1997, the general Tinyefuza was summoned by the Parliamentary Sessional committee on Defence and Internal Affairs to testify before the committee in connection with civil strife in northern Uganda. In the course of his testimony, the general made a stinging attack on the Uganda peoples' Defense forces in its handling the insurgency in northern Uganda. His critics were widely reported by the media and press. However, such criticisms did not go down well with some senior government and army officials who reportedly said that the general was "up to something." During the same period, Tinyefuza denounced the system and tried to retire from the army. See R. Kakungulu – Mayambala, "Phone –tapping and the Right to Privacy: A Comparison of the Right to Privacy in Uganda and Canada available at [http://www.bileta.ac.uk/content/files/conference%20papers/2008/Phone-tapping%20and%20the%20Right%20to%20Privacy%20\[Ronald%20Kakungulu\].pdf](http://www.bileta.ac.uk/content/files/conference%20papers/2008/Phone-tapping%20and%20the%20Right%20to%20Privacy%20[Ronald%20Kakungulu].pdf).

¹⁷⁵ Badru D Mulumba and Emmanuel Mugarura, "MP Ogwala to sue Museveni; Protests tapping her phone," *The Daily Monitor Newspaper*, October 4, 2013.

the state intelligence operatives and agencies of phone tapping at the height of the 2001 Presidential and Parliamentary campaigns.¹⁷⁶

The unwarranted interception of telephone conversations not only denies people freedom of communication, but such acts greatly affect the process of democratization. However, the use of legal means in tackling terrorism has registered moderate success. It has been argued that criminal prosecution and the detention of terrorist suspects disrupts their networks.¹⁷⁷ In the case of Uganda, such methods have been effective in apprehending, prosecuting and convicting suspected terrorists. For instance, Edrisa Nsubuga and Mohamed Nsubuga, the perpetrators of the twin Kampala bombings, have been convicted and sentenced to 25 and five years, respectively, and another 85 terror suspects are still on trial.¹⁷⁸

As a counterbalance to all previous laws, the Constitution of Uganda forms the basic foundation through which all forms of laws in the country are regulated. First and foremost, the constitution advocates for protection and promotion of fundamental and other human rights and freedoms to the citizens of the Republic of Uganda. This premise forms a basis through which the balance can be attained. The constitution provides for legal systems to address injustice within the public, by allowing citizens fair trials and due process. To ensure that such activities are legally conducted, judicially, parliament, civil society and the media are constitutionally mandated to be part of the procedure in every incident that takes place in the country. In addition, Article 52 of the Ugandan constitution mandates Human Rights Commission (HRC) to receive all complaints and information pertaining to violations of human rights and freedoms in the country, compile, and publish periodic reports on its findings. The powers of this commission provide a levelled ground on which counter-terrorism laws can function and maintain balance between democratization's demands and the demands of security.

¹⁷⁶ This complaint was lodged by Col (rtd) Dr. Kizza- Besigye at the Uganda Human Rights Commission (UHRC) on alleged phone tapping by the state during the 2001 Presidential and Parliamentary campaigns in which he contested as the Reform Agenda (RA) presidential candidate.

¹⁷⁷ Paul Wilkinson, 113.

¹⁷⁸ Edward Anyoli and Farooq Kasule, "July 2010 Bomb Suspects Face Trail," *New Vision Newspaper*, November 11th 2011.

2. Balancing Freedom of Movement with Border Control Policies

Notwithstanding the good intentions for border controls, freedom of movement has been greatly affected by reforms introduced within immigration systems. However, considerations of these reforms have been as a result of increased security threats within immigration forming a basis for the government to initiate border control measures. These controls are geared towards having immigration system with tight security controls that enable the travelling public to gain confidence, and to bar individuals with ulterior motives from entering the country illegally. These reforms involve: Border patrols, border fencing, issuance of entry visas, and setting up security check points along the borders. In an effort to enforce these reforms, some individual freedoms and rights have been infringed on especially the freedom of movement, which contravenes Article 29 of the constitution that guarantees freedom of movement of people. The hassles that the travelling public experiences along the borders do not resonate well with expectations of fundamental human rights as enshrined in the Ugandan constitution.

Border patrols, stop-and-search operations as well as targeting of religious, racial and tribal groups are the main activities that are considered to be conflicting with liberties and human rights. This scrutiny has mainly affected the Muslim community members across the East African countries, and people with tribal connections have also been targeted. In Uganda, the Somali community has been targeted mainly due to its connections with Somalia where Al-Shabaab militants are currently causing havoc. In addition, individuals from countries that have connections with terrorist networks are also among targeted individuals within the travelling public and along the borders.

As a way of countering these excesses and the temptations of undermining the rule of law while trying to enforce border reforms, there are constitutional mechanisms that provide favorable grounds through which individual civil liberties are guaranteed. The media and the Human Rights Commission, by virtual of their constitutional obligations, play an important role in ensuring that people's liberties are preserved even when some individuals are caught on the wrong side of the law. The media and HRC are in a position to monitor, highlight and expose such violations and excesses. In the process, the balance between security and civil liberties will inevitably be attained—and

maintained—because these two institutions not only act as watchdogs for liberties, freedoms, and human rights, but also keep on reminding and pressuring the government when issues of human rights abuses crop up. This act in itself is a good indicator that in as much as the government would like to institute reforms with the aim of maintaining security, still these reforms must conform to democratic principles.

3. Balancing Civil Liberties with Security Forces (Police, Military, and Intelligence)

Currently, Uganda has an active Parliament that has presided over the passing of enabling laws in the promotion of democracy. Coupled with the legislation, other institutions of government like the police, military and intelligence services have been boosted. As a result, these institutions are showing a growing trend and are functioning as intended along democratic lines of accountability and transparency. The police, for instance, have carried out reforms that have enabled the force to be one the effective institutions and the lead agency in the fight against terrorism and the promotion of law and order in the country. In addition, with increased advocacy of internal democracy and accountability engineered by the civil society, the government of Uganda carried out transformation of the existing institutions in the bid to promote the rule of law. As a result of this transformation, independent bodies responsible for the governance and oversight controls have been created to monitor and regulate the activities of armed forces, police and intelligence services while executing their functions.

For instance, Ugandan parliament established a sessional Committee on defense and internal affairs and mandated it to directly oversee the activities and programs of armed forces, police and intelligence services.¹⁷⁹ This committee is charged with the responsibility of ensuring that the armed forces, the police and intelligence services maintain discipline and follow the code of conduct as enshrined in the constitution. With this effort in place, together with the watchful eyes of both domestic and international

¹⁷⁹“Committee on Defense and Internal Affairs,” Parliament of Uganda, February 25, 2015, <http://www.parliament.go.ug/mpdata/members.hei?committeeno=29&name=Committee+on+Defence+and+Internal+Affairs>.

media, operational methods of all security agencies have been restrained and consequently excesses of human rights concerns have been truncated.

On the military front, the involvement of Ugandan forces in peace keeping missions has not only put Uganda in the spotlight but also enhanced the capacity of UPDF to respond to terror attacks as well as being among the leading countries in the fight against terrorism on the African continent.¹⁸⁰ Through the military interventions, the LRA and ADF have been tremendously weakened to the extent that they no longer have the capacity to carry out any attack on the Ugandan soil. This situation had ever been experienced in most parts of the country for the last two and half decades.

B. LESSONS LEARNED FROM THE U.S AND UK’S EXPERIENCES

Over a period of time, the United States and the UK have been faced with problems of terrorism but have managed to prevail over them through various approaches. As such, the experience of these countries forms a basis through which Uganda can learn lessons and help it deal with its current threats of both domestic and international terrorism. Throughout the campaign of global war on terror, these countries have embraced and maintained the notion of rule of law that is one of the main features of liberal democracies. These countries have developed institutions, advanced, technology and resources that they have committed in the fight against terrorism.

On the other hand, the United States, and the UK in their quest to fight terrorism have also had their share of human rights violation criticisms. The U.S. ‘targeted killing policy’ irrespective of whether one is in armed conflict or not clearly brings out the amorphous nature of the global fight against terror that doesn’t respect international armed conflict principles. The case of Anwar al-Awlaki in Yemen is for example to some extent regarded as extra-judicial killings and a constitutional violation of rights. The violation of human rights by U.S. and UK forces of its supported foreign troops compromises the fight against terrorism and affects support for the alliance. This violation has been noted in the way suspected terrorist trails have been handled in these

¹⁸⁰ U.S. Department of State Bureau of Counterterrorism, “Chapter 2. *Country Reports: Africa Overview*,” *Country Reports of Terrorism 2013* (Washington, D.C.: U.S. Department of State, 2014) 11–54, <http://www.state.gov/documents/organization/225886.pdf>.

countries. The UK has for example been grappling with the extradition of radical Islamic cleric Abu Qatada. The European Court of Human Rights overturned the ruling by the British courts when it held that Abu Qatada cannot be deported for fear that he will not get a fair trial in Jordan. The UK Prime Minister was quoted by the *Daily Telegraph* casting the human rights concept thus

The whole concept of human rights laws is in danger of becoming “distorted” and “discredited” because of the court’s decisions. “We do have a real problem when it comes to foreign national who threaten our security.... The problem today is that you can end up with someone who has no right to live in your country, who you are convinced – and have good reason to be convinced – means to do your country harm. And yet there are circumstances in which you cannot try them, you cannot detain them and you cannot deport them.So having put in places every possible safeguard to ensure that (human rights) rights are not violated, we still cannot fulfil our duty to our law-abiding citizens to protect them.”¹⁸¹

Despite this challenge, the two countries have persisted in the fight against terrorism arguing they will not relent until terrorism is defeated and its ideology uprooted.

The 9/11 events occurred when both the United States and the UK were already involved in several campaigns which had terrorist components. The United States for instance had witnessed several terror incidents both internal and external targeting its interest abroad like the 1993 attack on the World Trade Center, or the U.S. embassy bombings in parts of Africa. Other than being involved in handling terror incidents, the United States had also been earlier involved in different campaigns against terrorism in both Africa and Middle East countries examples of such campaign included the bombings in Libya and Sudan.

The UK on the other hand has also been engaged in a domestic campaign against the IRA for a long period. Nevertheless, post-9/11, the UK has also been targeted by international terrorist groups, the July 2005, bombings serve as a good example. In this regard, given the number of terror incidents, the levels of threats these countries managed to deal with, and the approaches these countries have used in battling the scourge of

¹⁸¹ Rowena Mason, “David Cameron: human rights laws stop Britain protecting against terrorism,” available at <http://www.telegraph.co.uk/news/politics/david-cameron/9038869/David-Cameron-human-rights-laws-stop-Britain-protecting-against-terrorism.html>.

terrorism in their respective countries certainly offers lessons for countries facing the problem of terrorism to learn from.

One of the key approaches used by the United States and the UK in tackling the threat of terrorism has been military intervention. These interventions target countries where terrorists have safe havens, likely breeding states, and rogue states that sponsor terrorist activities. This military strategy was widely advocated by President Bush immediately after 9/11 as he argued that the best way to fight terrorism was to take the fight abroad rather than fighting it on American soil.¹⁸² Despite its flaws, the military approach has had enormous success in killing and capturing top terrorist leaders. Using similar approach, Uganda used military intervention to fight terrorism in countries where terrorist groups were posing a serious security threat to the Ugandan government. Through the use of the Uganda People's Defence Forces, Uganda has conducted several military campaigns in two neighbouring states, the Democratic Republic of Congo and Sudan, which were facilitating and providing safe havens for the ADF and the LRA terrorists groups.

Through the initiatives espoused by the Intergovernmental Authority on Development (IGAD), a regional body for the promotion of peace and security in the Horn of Africa, Uganda was allowed to enter Sudan and conduct military operations. In 2002, Sudan and Uganda signed a protocol known as the Kampala Declaration to allow the UPDF to pursue the LRA on the Sudanese territory.¹⁸³ With this agreement, Ugandan troops got involved in military operations outside Ugandan borders, as most of the battles against the LRA were fought on the Sudan territory.

Other than the military approach, the United States and UK used the legislative approach by adopting new laws to deal with the problem of terrorism on the legal front. The essential focus of these laws (discussed in detail in Chapter III) was to streamline all legal challenges of combating terrorism and filling in gaps in institutional measures in the quest for providing a legitimate way of dealing with the threat of terrorism. Thus,

¹⁸² Beckman, *Comparative Legal Approaches*, 39.

¹⁸³ Mareike Schomeius, "The Lord's Resistance Army in Sudan: A history and Overview." <http://www.smallarmssurveysudan.org/fileadmin/docs/working-papers/HSBA-WP-08-LRA.pdf>.

domestically, when terrorists are arrested in these countries, the criminal charges can be handled within prescribed laws.

This is yet another lesson Uganda should learn from both the United States and the UK. Whatever the criticisms the new laws were subjected to, still they were operating within the democratic systems. Thus, Uganda passed and adopted the Ant-Terrorism Act of 2000 based on a similar premise. The new Act created new specific offences related to terrorism as opposed to the previous general charge of treason that had been used in Uganda. The new law however, did not emerge out of the blue; it went through legal procedures like it was the case with the U.S. Patriot Act and the UK ATCSA.

Having well-functioning and strong institutions in place is one important factor that has enabled the United States and UK to contain the scourge of terrorism. The main focus of their efforts has been to empower and strengthen the enforcement agencies and immigration institutions with the view of closing the gaps within the existing institutions to match the current level of threats. The United States and the UK carried out structural reforms that saw the amalgamation of different security agencies and strengthened them. In addition, other overarching reforms were also instituted within the immigration systems to deny terrorists opportunities to sneak into the country undetected and to transfer weapons and explosives.

The importance of carrying out institutional reforms was a lesson that could not escape Uganda's attention as way of strengthening its CT efforts. This is because most democratizing states have not developed the capabilities of their forces to reach a level of proficiency which enable them execute sophisticated missions like the American specialized forces. Thus, the creation of Police Counter-Terrorism unit within the mainstream police and the Joint Anti-Terrorism unit (JAT) composed of personnel from different security agencies are two examples of reforms carried out based on the U.S. and UK model. As a result of this consideration, Uganda has been able to benefit from most of the U.S. and UK programs, especially from the law enforcement and military assistance inform of training and equipment as way of promoting institutional building and reforms.

The legislative select committees of the United States and UK have benefits of scrutiny and budget approvals and appropriations with limited political interference, individual willingness to participate in oversight and to withhold confidential information obtained in the course of their work. In Uganda, some of such operations are classified implying that the legislative committee cannot access any of such information on operations and budgets as in the case of the United States and the UK. This is done presumably to avoid leakages and to safe guard sensitive information on defence matters hence leaving it under the oversight of the executive. The intelligence services of the United States and the UK are some of those with more oversight and control systems. Having a similar oversight function in Ugandan intelligence services marks a big step in the democratization process.

C. CONCLUSION: WHAT DOES THE BALANCE LOOK LIKE?

To be sure, democratic system in Uganda cannot be comparable to the United States or UK, which have centuries of settled democracy on the record. Uganda has recently transitioned from a military junta to multi-party system and still struggles with lingering influences and weak opposition. In contrast, the United States and the UK for example have strong intelligence oversight systems. The common oversight systems include parliamentary oversight, judicial oversight, media and civil society Organisations. These serve as a control mechanism and stand for accountability. The commonly used oversight system is the legislative committee. Whereas in the United States, the committee has a mandate covering policy, administrations operations and legality, in Uganda it does not cover operations and legality as it does not cover legality in the UK.

It is also worth noting that anti-terrorism laws in Uganda (as elsewhere) are broad in their implementation. As a result, counterterrorism policies inevitably affect civil society in a number of ways. For example, whereas civil society advocates for free expression and assembly, anti-terrorism policies on the other hand may directly or indirectly limit free assembly or public gatherings. This is because a free society without legal restrictions compromises the security of the state as in most cases, terrorists take advantage of the laxity within the laws as was in the case of the July 2010 Kampala

bombings. This incident revealed the extent of security laxity forcing the government to institute legal and security hardening measures in all urban centres and all entry points (borders) with view of denying terrorists any kind opportunity to strike without being detected. These measures limited any form of public gatherings, assembly, access to public places and government installations. For instance, all proprietors of public places are required to put in place deterrence security measures at their own cost.

In order to strike and keep the balance between freedom and security, some legal measures with respect to freedom of association and public gatherings, have been considered with the introduction of the Public Order Management Bill (POM), which requires anyone intending to hold any gathering and demonstrations to seek permission from police and inform any other relevant state security organs.¹⁸⁴ Despite the restrictions, which according to critics within civil society argue that such restrictions compromise the principles of democracy, the bill provides an environment that allows freedom of expression and association by providing the necessary security for any kind of public gathering.

Furthermore, these restrictions on public gathering and assembly do not extend to the press and the media, which remain free. Uganda has a wide range of radio stations, televisions and a variety of newspapers where citizens can freely express their views. Based on the preceding analysis, one could conclude that currently, for Uganda, the liberty/freedom/human rights/transparency versus security balance is heavier on security due to threats levels the country has been experiencing for the last two and half decades. As legal scholars Eric Posner and Adrian Vermeule observe, “any increase in security requires a decrease in liberty.”¹⁸⁵ This same argument gives a clear understanding why the balance in Uganda is heavier on security side.

Better still, Uganda has an active civil society that is at the forefront of ensuring that government is delivering services and is also involved in championing the fight against corruption, the eradication of poverty as well as the promotion of election

¹⁸⁴ Article 19, Uganda: Public Order Management Act, October 2013, available at: <http://www.refworld.org/docid/527b6cd74.html> [accessed 19 February 2015].

¹⁸⁵ Solove, *Nothing to Hide*, 34.

monitoring.¹⁸⁶ In addition, as a way of promoting the rule of law, civil society demands government to involve the public in its own security by providing it with information about potential threats and to give it assurances of how such threats will be handled. The linkage between the state and civil society is that civil society fosters the process of democratization in the way it actively participates in the formulation of public policy and law reform processes. Such actions have the potential to promote and encourage the rule of law that is one of the prerequisites of a democratic state.

¹⁸⁶ Apollo N. Makubuya and Maureen Nakirunda, *Report of a study on the civil society in Uganda* (Oslo, Norway: NORAD Norwegian Agency for Development Cooperation, 2011), 1–50
<http://www.norad.no/en/tools-and-publications/publications/publication?key=109374>.

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V. CONCLUSION AND RECOMMENDATIONS

From the time the Uganda started experiencing security threats emanating from both domestic and transnational terrorism, it adopted various approaches to combat the threat. As in any other democratizing state (as well as in the established democracies), these counter-terrorism policies have prompted concerns and dissent in regard to civil liberties.

A. COUNTERTERRORISM AND FREEDOM—NOT AN EITHER-OR PROPOSITION

Whereas most laws define terrorism, acts of terrorism, and terrorism activities, Golder and William observe that the laws differ in range, scope, and application.¹⁸⁷ States have created sanctions and increased state management of terror acts by defining considered terrorist groups, financial support of terrorists, and increasing surveillance on suspected terrorists. In Uganda, increased surveillance created resentment among the population who argued that the new laws were taking away their civil liberties. Despite this outcry, Uganda has used its criminal justice model to try and convict suspected terrorists. However, the government of Uganda is still facing legal challenges relating to human rights and jurisdiction.

In addition, the fight against terrorism across the world has generated debate irrespective of the mode of approach or the level of development of countries involved. The UN and other international and regional bodies have provided legal forums that have been supportive in the fight against terrorism globally. The ways in which the United States and the UK have fought global terrorism have been appreciated and criticized in equal measures.

It has been a challenge globally to protect human rights and combat terrorism because the laws, policies, and practices adopted in the aftermath of the 9/11 attacks have undermined human rights in some cases. The new laws contain clauses of arbitrary

¹⁸⁷B. Golder and G. Williams, “What is ‘Terrorism’? Problems of Legal Definition, Problems of Legal Definition” *University of New South Wales Law Journal* 22, no. 2 (2004): 270.

detention as in the UK's ATCSA that allows segregation based on nationality, and long-term isolation of suspects. Indiscriminate attacks on civilians, breeds resentment and is a violation of their human rights.

Military intervention has been associated with human rights abuses and extra judicial killings. On top of this, military actions have failed to completely defeat terrorism and terrorist networks. With respect to legislative responses, there has been strong criticism of the ways the law may violate civil liberties. This criticism has created public resentment and alienated the population, which undermines the democratic process.

In the area of international compliance, the on-going challenge has been translating international conventions into judicial framework. For instance, terrorism cases involving criminal prosecution and extradition are still presenting difficulties to local courts as in the case of Kenyan terror suspects being tried in Ugandan courts of law. Finally, these counterterrorism measures in total have been perceived by detractors as serving U.S. and U.K. agendas only, and involving the rest of the world in a war that does not serve individual nations' interests. The UN resolution on Human Rights at the 57th session is a step in the right direction, but compliance especially by powerful states such as the United States and UK has been inconsistent.

The question remains. How can terrorism be fought without the government overstepping on the peoples civil liberties? The International Court of Justice best summaries this dilemma:

Countering terrorism is itself a human right objective, since states have a positive obligation to protect people under their jurisdiction against terrorist acts. This positive duty on states requires them to prevent, punish, investigate and redress the harm caused by such acts. At the same time states must accept that this positive duty to protect applies both to those who may be at risk from terrorism and those who may be suspected of terrorism. The state has no authority in law to determine that some people do not qualify to have their rights respected.¹⁸⁸

¹⁸⁸ Assessing Damage , Urging Action, *Report of the Eminent Jurist Panel on Terrorism, Counter Terrorism and Human Rights* (EJP Report), 2009, 16.

In other words, protecting human rights in anti-terrorism legislation should go beyond a legal requirement. It should be in real practice.

B. RECOMMENDATIONS

Uganda must focus on revising its laws to consider the merging trends and modes of terrorism. The experiences gained in the field, through international exposure, and by global practices should be incorporated to minimize the existing gaps in the legal system. The United States closed such holes in its legal framework by enacting the Domestic Enhancement Act to cover gaps in the Patriot Act. The United Kingdom enacted the Prevention of Terrorism Act (2005) to address the missing gaps in the ATCSA.

Uganda urgently needs to strengthen neighborhood effect to avoid a relapse of some of the terrorist groups, especially the LRA and the ADF, operating in neighboring countries. The government must play an active role in stabilizing Uganda's neighbors in a non-confrontational approach. Specifically, the Ugandan government must keep a close eye on South Sudan's government following the civil war that was sparked by the nation's two top leaders.

More broadly, a joint anti-terrorism force could augment the IGAD's effort to cover the Horn of Africa and the Great Lakes regions. This effort will solve the problems of terrorists using neighboring states to launch attacks against Uganda and will ease the cross-border operations. The government should also initiate mutual legal agreement act with partner states.

There is also a need for establishing a community-centered terrorism approach to generate public support because terrorism flourishes in communities that are not vigilant about their surroundings. Unlike Western countries, Ugandan communities are more bonded by association and belonging to a community. They can easily identify those who do not belong.

Given the importance of police in the fight against terrorism, it is of paramount importance that the government of Uganda should as a matter of policy not only locate more resources for police force and its specialized units, but also need to provide

necessary anti-terrorism training programs. Enhanced training can reduce the likelihood of or damage from terrorism incidents and must be prioritized in law enforcement efforts to combat terrorism.

Uganda, like the United States and Britain, has experienced devastating acts of terrorism first-hand and, thus, has joined in leading the fight against violent extremism that threatens its democratic process. Without question, the laws and processes of Anti-terrorism require constant and critical attention to ensure that they do not imperil Uganda's hard-fought civil liberties. At the same time, even such criticism must acknowledge the crucial role that counterterrorism measures play in maintaining and promoting Ugandan democracy. The balance between security and liberty is not struck once: It is a matter of constant refinements according to the prevailing conditions in state and society. The Ugandan experience demonstrates this process. It is also the case that security and liberty are not diametrically opposed, and considered anti-terrorism measures can enhance both at the same time. Uganda must continue its efforts toward such security in its democracy.

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